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Supreme Court, U.S.
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In The

Supreme Court of the United States

JOHNNY PARTAIN,
Petitioner

v.

JUDGE RANDY CRANE, JUDGE MARVIN ISGUR,
JUDGE RICHARD SCHMIDT
Respondents

On Petition For Writ Of Habeas Corpus To Concurrent Rulings In Bankruptcy Case No. 05-70128, District Case No. M-06-137, and 5TH Circuit Of Appeals Case No. 07-40385

PETITION FOR WRIT OF HABEAS CORPUS

JOHNNY R. PARTAIN
7020 N 16th Street
McAllen, Texas 78504
956-240-1821

QUESTIONS PRESENTED

1. Whether judicial complicity to malfeasance or fraud on a court by a judge tolls 18 U.S.C 242 and 18 U.S.C. 3 on the implicated judge.
2. Whether Bankruptcy Judge Marvin Isgur is legally empowered to incarcerate Johnny Partain for maintaining and taking rent on a condominium owned by Johnny Partain and Teresa Partain in 2005, if the condominium is later seized by the bankruptcy judge through a non-litigant, Global Limo, Inc., in 2006.
3. Whether Global Limo, Inc. (aka Atlas Transportation, Inc.), whose assets and operation where illegally seized by Bankruptcy Judge Marvin Isgur in 2005, is liable for 23 passenger deaths or criminal convictions through it's operation by a bankruptcy trustee.
4. Whether Federal Judge Crane, Bankruptcy Judge Isgur, and Bankruptcy Judge Schmidt may consort outside their respective court records and thereafter act inside their respective courts to validate a contentious finding of contempt in bankruptcy adversary case no. 05-07009 against Mr. Partain without further due process to Mr. Partain. And, whether such judicial behavior may occur during habeas corpus litigation.
5. Whether Judge Crane should review a petition for habeas corpus on complaint of Bankruptcy Judge Isgur if Judge Crane has already recused himself from a similar lawsuit (same issues) against Bankruptcy Judge Isgur upon a showing of interest of Judge Crane by Mr. Partain?

DISCLOSURE OF PARTIES TO PROCEEDINGS

1) Federal Judge Randy Crane, Bentson Tower, 1701 W. Hwy. 83, 10th Floor, McAllen, Texas, 78501.

2) Bankruptcy Judge Marvin Isgur, United States Courtroom 404, 515 Rusk, Houston, Texas, 77002

3) Bankruptcy Judge Richard Schmidt, U.S. Bankruptcy Court, 1133 North Shoreline, Corpus Christi, TX 78401.

4) Johnny Partain, 7020 N. 16th Street, McAllen, Texas 78504;

5) Elberto Bravo, Warden of East Hidalgo Detention Center c/o Roel Esquivel Attorney for Warden Bravo, 114 S. 12th Avenue, Edinburg, Texas 78539;

6) James Maples, 605 Wisteria, McAllen, Texas, 78504 c/o Kelly McKinnis, 240 Water Tower Centre. 612 Nolana Loop. McAllen, Texas 78504

7) Compass Bank, 3900 N. 10th Street, McAllen, Texas 78501 c/o Atlas & Hall LLP, 818 Pecan Blvd, Mcallen, TX 78501;

CORPORATE DISCLOSURE STATEMENT

Global Limo, Inc. is a legal Texas corporation currently recorded with the Texas Secretary of State as Atlas Transportation, Inc. There is no parent corporation or publicly held company owning 10% or more of the corporate stock. The corporation's public disclosure statements and taxes are current, but the corporation is currently not engaged in business or commerce.

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REPORTS

This instant complaint has become a complex case argued in many venues with contradictory official and unofficial opinions, nonopinions, and orders provided and reprinted in the Appendix on the pages indicated as follows:

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Additionally, see -

Johnny Partain v. Marvin Isgur, 7:07-cv-00016, *Order of Recusal [3],* (U.S. District Court SDTX) (February 28, 2007), available at http://pacer.psc.uscourts.gov/;

Judicial Misconduct Complaint No. 07-05-351-0011, (U.S. Court of Appeals, Fifth Circuit)(October 1, 2006 and February 6, 2007); and

USA v. Global, 7:06-cr-00076 (SDTX)(Judgment in a criminal case against the corporation Global Limo, Inc.); available at http://pacer.psc.uscourts.gov/.

JURISDICTION

This Court has jurisdiction per 28 U.S.C. §2241(a), 28 U.S.C. §1651, and 28 U.S.C. §2201. Mr. Partain was originally incarcerated through *Maples et ux. v. Partain*, bankruptcy case 05-07009, *Order Finding Contempt And Requiring Incarceration* (App. 3), in the Southern District of Texas on February 27, 2007. Mr. Partain sued out a petition for habeas corpus through *Partain v. Bravo*, case M-07-092, *Order Granting Temporary Release From Custody* (App. 8), in the Southern District of Texas on May 10, 2007. Order Dismissing Habeas Corpus As Moot (App. 37) was entered on April 17, 2008, and Mr. Partain motioned Johnny Partain's Motion To Amend Findings Of Facts And Conclusions Of Law And For Reconsideration on April 24, 2008. Mr. Partain is temporarily released of incarceration, but is still currently subject to the custody of District Court more than 18 months after the initial temporary release. Additionally, Bankruptcy Judge Richard Schmidt ordered the seizure of $94,500 from Johnny Partain as punishment on contempt through *In re*

Maples, bankruptcy case 05-70128, *Order On Creditor, Johnny Partain's, Third Complaint Of Debtors' Default Of Plan Payment* (App. 5), pursuant to Bankruptcy Judge Marvin Isgur's orders of contempt on June 16, 2008, although Federal Judge Crane and the Fifth Circuit of Appeals are expressly unable to validate Judge Isgur's jurisdiction or authority.

Global Limo, Inc. was seized in *Maples et ux. v. Partain*, case 05-07009, initially on May 29, 2005, through seizure of corporate assets and injunction against it's Director, Johnny Partain, although Global Limo, Inc. was never a party to litigations. App. 77, Temporary Restraining Order; App. 81, Order Granting Preliminary Injunction; App. 97, Memorandum Opinion On Summary Judgment; and App. 111, Judgment. Global Limo, Inc. was deprived of legal representation and management while under the control of the Bankruptcy Courts and continues under burdens of criminal fines, Federal liens, revocation of transportation license to operate, and additional lawsuits although Mr. Partain has legally regained control of the corporation. A decision conceding, defining, or touching on any jurisdiction of the bankruptcy courts or any status of the corporation was absolutely unavailable until recently in *Partain v. Bravo*, case no. M-07-092, *Order Dismissing Habeas Corpus As Moot* (U.S. District Court) (April 17, 2008) (App. 37) and through concessions of that District Court's in hearing on November 30, 2007 (App. 149), and in *In re Maples*, case no. 07-40385 (5th Circuit) (App. 207).

In conformance to 28 U.S.C. §2242, this petition for habeas corpus is submitted to the Supreme Court since adequate relief through a final and meaningful habeas corpus review in District Court has been unobtainable because of the unresponsiveness the District Court and high levels of antagonism against Mr. Partain and Global Limo, Inc. pursuant to serious breaches of due process and violations of the 4th, 5th, 6th, 7th, 8th, and 9th amendments of the U. S.

Constitution against Mr. Partain and Global Limo, Inc. by Federal officers in the Southern District of Texas resulting in incarceration, deaths, immense business liabilities, seizures, and tort claims (greater than $1.2 billion) against the United States, and because of the tremendous culpability of the federal judicial officers and federal agencies responsible. The Fifth Circuit also appears unwilling to make adjudications thereof. This is exhibited in *Partain v. Bravo*, case M-07-092, through presumptively prejudicial delay, contradictory or omitted conclusions of law and findings of fact, and through attempts to dismiss the habeas corpus case on mootness and without resolution on April 17, 2008. This is exhibited in *In re Maples*, bankruptcy case 05-70128, wherefrom Judge Schmidt recently seized $94,950 from Mr. Partain on June 18, 2008 on the same contempt order of Judge Isgur purportedly under habeas corpus review of Judge Crane. This is exhibited in appeals to Judge Crane in *Partain v. Maples*, cases M-06-137 and M-05-257, wherefrom complaints of bankruptcy court jurisdiction were neglected forcing an appeal to the 5th Circuit. This is exhibited in recusal of Judge Crane in associated *Partain v. Isgur*, case M-07-016. The 5th Circuit has also shown an unwillingness to make any adjudications or decisions in a heavily related case, *In The Matter Of: James H Maples; Virginia Kathleen Maples*, case 07-40385, (5th Circuit) except in dissent attacking the constitutionality and jurisdiction of bankruptcy court's actions against Mr. Partain and Global Limo, Inc. Accordingly, the only judicial recourse to address this complaint of restraint of liberty is a petition for habeas corpus directed to this Court.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS PERTINENT TO THE CASE

U.S.C.A. 4 - The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated,

U.S.C.A. 5 - No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury ... nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S.C.A. 6 - In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

U.S.C.A 7 - In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved

U.S.C.A 8 - Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S.C.A 9 - The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

11 USC §105 - (a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest

shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. §547 (b) - Except as provided in subsections (c) and (i) of this section, the trustee may avoid any transfer of an interest of the debtor in property—

(1) to or for the benefit of a creditor;

(2) for or on account of an antecedent debt owed by the debtor before such transfer was made;

(3) made while the debtor was insolvent;

(4) made—

(A) on or within 90 days before the date of the filing of the petition; or

(B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and

(5) that enables such creditor to receive more than such creditor would receive if—

(A) the case were a case under chapter 7 of this title;

(B) the transfer had not been made; and

(C) such creditor received payment of such debt to the extent provided by the provisions of this title.

18 U.S.C.§242 - Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of

this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

18 U.S.C. 3 - Whoever, knowing that an offense against the United States has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact.

28 U.S.C. § 157 - (b) (1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title

28 U.S.C §2243 - The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require.

28 U.S.C. §1334(c)(1) - (c) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction—

(1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate;

28 U.S.C. §1651 - (a) The Supreme Court and all courts established by Act of Congress may issue all writs

necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

28 U.S.C. §1738 - ...Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

28 U.S.C. §2201 - (a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

28 U.S.C. §2241 - (a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions.

28 U.S.C. §2242 - Application for a writ of habeas corpus shall be in writing signed and verified by the person for whose relief it is intended or by someone acting in his behalf. It shall allege the facts concerning the applicant's commitment or detention, the name of the person who has

custody over him and by virtue of what claim or authority, if known. It may be amended or supplemented as provided in the rules of procedure applicable to civil actions. If addressed to the Supreme Court, a justice thereof or a circuit judge it shall state the reasons for not making application to the district court of the district in which the applicant is held.

28 U.S.C.§455(a) - Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

STATEMENT OF THE CASE

COMES NOW JOHNNY PARTAIN, Petitioner in the above styled and numbered cause and files his *Petition For Writ Of Habeas Corpus*, on behalf of Johnny Partain and on behalf of Global Limo, Inc. (aka Atlas Transportation, Inc.) a Texas corporation administered by Johnny Partain as Director and President thereof, and respectfully shows unto this honorable Court the following:

- Johnny Partain was illegally confined in February of 2007 for approximately 72 days in a federal detention center on disingenuous findings of contempt by Bankruptcy Judge Marvin Isgur following a complaint by Mr. Partain to the 5th Circuit of fraud and racketeering in the courtroom. After suing out a petition for habeas corpus in May of 2007, Mr. Partain's liberties are still restrained under the authority of Federal Judge Randy Crane of the Southern District of Texas, McAllen, Texas.
- Bankruptcy Judge Richard Schmidt illegally ordered the seizure of $94,500 from Mr. Partain, a Creditor in Judge Schmidt's Court in bankruptcy case no. 05-70128, to validate Bankruptcy Judge Isgur's contempt finding in adversary cause no. 05-07009

and to give mootness for dismissal of Mr. Partain's habeas corpus case in front of Federal Judge Crane in habeas corpus case no. M-07-092.

- Global Limo, Inc., a non-party, had it's assets illegally seized and operated through a hostile trustee of the Bankruptcy Court, without protection or bond and under the directions of Judge Isgur and Judge Schmidt, and that illegal operation resulted in 23 deaths, financial destruction of the corporation, loss of reputation, and federal criminal convictions for fraud and conspiracy which currently affects and burdens Global Limo, Inc. through criminal fines, federal liens, revocation of license to operate, and additional lawsuits. The Fifth Circuit of Appeals recently refused to make a finding on Mr. Partain's complaints, except to find in unopposed dissent that Bankruptcy Judge Isgur lacked jurisdiction to seize the corporation's assets or to seize Mr. Partain's right to sue.

FACTS

Mr. Partain was defrauded in 1997 by James Maples, Kathleen Maples, and Global Tours and Charters[1] and eventually won a judgment for fraud, deceptive business practices, and breach of contract against *James Maples and et al.*, case CL-29,530-A (Hidalgo County, Texas). James Maples and Kathleen Maples (Maples), filed for bankruptcy, cause 05-70128, in February of 2005 to avoid a contempt hearing in Hidalgo County Court at Law No. 1 of orders which effectively turned over interests of fraudulently conveyed assets[2] to Mr. Partain through transfer of legal interests in Global Limo, Inc. to Mr.

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[1] Global Tours and Charters is a d/b/a of James Maples and Kathleen Maples and is not the Texas corporation Global Limo, Inc.

[2] Global was created by Maples through written advice of attorney, Keith Livesay, to construct a legal entity to convey assets away from Mr. Partain wherefrom Texas State Bank would cross-collaterize to prevent collection. App. 203 – *Correspondence Letter from Mr. Livesay*.

Partain.[3] App. 57 – Partain v. Maples, CL-29,530-A, Order (Hidalgo County Court at Law no. 1).

Bankruptcy Judge Richard Schmidt, bankruptcy case no. 05-70128, held three emergency hearings on complaints from Maples and Texas State Bank that Mr. Partain was in violation of bankruptcy's automatic stay for not allowing Maples to operate Global Limo, Inc. and then declined the complaints on finding that Mr. Partain was the probable owner of Global Limo, Inc. Judge Schmidt directed Maples to the county courts for relief. Maples was denied relief by Hidalgo County Court at Law No. 1, wherefrom Maples with the support of attorneys for Texas State Bank petitioned *Maples v. Partain*, bankruptcy adversary case 05-07009, on an affidavit that Maples was the owner of Global Limo, Inc. (Global). See App. 61-76, Plaintiffs' Original Complaint For Injunctive Relief And Request For Temporary Restraining Order.

On March 29, 2005, Judge Isgur seized assets and operations of Global from Mr. Partain through *Temporary Restraining Order* (TRO) (App. 77) although Mr. Partain was able to produce *Order* (App. 57) adjudging him with all interests to the corporation. Mr. Partain complained that the parties lacked standing to complain and that the bankruptcy court had no jurisdiction - the assets and operation of Global are not involved in Maples' bankruptcy nor are any prepetition considerations thereof. App.119 - In re Maples, case no. 05-70128, Debtor's Second Amended Plan Of Reorganization, (Bankruptcy, SDTX). On March 8, 2005, Mr. Partain was threatened by Judge Isgur with an immediate contempt hearing unless he agreed with a preliminary injunction order. 28 U.S.C. § 157(b)(1).

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[3] Mr. Partain became legal Director and President of Global Limo, Inc. in conformance with the corporate charter and Texas Law and cancelled all outstanding shares previously owned by Maples as stolen. These shares were re-issued as uncertificated shares in February of 2005 to Trust97.

Regardless, Mr. Partain was tried for contempt on April 19, 2005; May 9, 2005; and May 16, 2005 and found not in contempt. App. 211, Court Docket. Judge Isgur issued *Order Granting Preliminary Injunction (PIO)* (App. 81) on May 17, 2005, on finding that Mr. Partain had no interest in Global Limo, Inc. and on finding that the Court needed to protect Texas State Bank's interest in the corporation from Mr. Partain (Texas State Bank is not in bankruptcy).

On September 23, 2005, a bus operating under the Trustees' (Maples') authority burned and killed 23 persons and injured others prior to the landing of Hurricane Rita: The bus had been leased outside the bankruptcy process and without permission from Mr. Partain, using Global resources and purportedly under the operation of Global. Mr. Partain had been previously denied protection or bond for Global through Maples v. Partain, case 05-07009, *Temporary Restraining Order* (App. 77) on May 29, 2005 on basis of FRBP 7065 (which may violate USCA 4) and through *Motion to Deny Funds to Texas State Bank [55]* in said cause. Mr. Partain again argued for protection of the corporation through *Motion To Terminate Maples From Global Limo, Inc. [140]*, and *Motion To Preserve Global Limo, Inc. And For Judge Schmidt and Judge Isgur To Confer And Determine Responsibility To Global And Partain*. See App. 87 - Motion To Preserve Global Limo, Inc. And For Judge Schmidt and Judge Isgur To Confer And Determine Responsibility To Global And Partain. Judge Isgur refused to act since he considered Global to be in bankruptcy under Judge Schmidt's bankruptcy court and Judge Schmidt refused to act because Global was not in bankruptcy and was under the orders of Judge Isgur. Consequently on January 26, 2006, Judge Isgur entered *Memorandum Opinion On Summary Judgment* (App. 97) finding that Mr. Partain was indeed the owner of Global enabling his court to use bankruptcy rule 11 U.S.C. §547 to avoid Mr. Partain's interest in the corporation and to remove standing of Mr. Partain to sue Maples and Texas

State Bank or make complaints. On April 27, 2006, Judge Isgur entered *Judgment* (App. 111) wherefrom he placed all interests and assets of Global Limo, Inc. and a condominium belonging to Mr. and Mrs. Partain into Maples' bankruptcy estate.[4] In October of 2006, Mr. Partain complained of fraud and racketeering in Judge Isgur's court and in Judge Crane's court to the 5th Circuit, although Mr. Partain did not necessarily allege a judge's involvement. Judge Crane recused[5] himself from the proceedings in *Partain v. Isgur*, cause 07-016, *Order Of Recusal* (SDTX) (Feb. 28, 2007) on Mr. Partain's showing of connections and interests to the 5th Circuit between Texas State Bank, Mr. Morris Atlas, Atlas & Hall LLP, Hon. Randy Crane, and possibly the Republican Party. Judge Isgur ordered a hearing for contempt against Mr. Partain immediately following dismissal of complaints of his Court to the 5th Circuit: Maples' Attorney, Kelly McKinnis, refused to prosecute against Mr. Partain and withdrew prior to the contempt proceedings. On or about January 23,

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[4] The condominium was property fraudulently conveyed to Global Limo, Inc. after a fraud judgment and filing of an abstract of judgment in case no. CL-29,530-A against Maples et al. pursuant to Tex. Prop. Code § 52.001 - § 52.043. Mr. Partain transferred the condo from Global to Mr. and Mrs. Partain on January 27, 2005 after acquiring all rights therein. Texas State Bank purportedly put a lien against the condo five days later and sent $47,000 to an escrow account under a trust of James Maples "for business purposes" which was used to by Maples to purchase another ranch home just prior to filing bankruptcy. The condo was ordered placed in Maples' bankruptcy estate by Judge Isgur, but Texas State Bank later motioned to execute against it and Global assets made basis that these assets did not actually affect the bankruptcy estate. See App. 140, Texas State Bank's Motion For Relief From The Automatic Stay (U.S. Bankruptcy Court SDTX) (Aug 22, 2007); Judge Schmidt ordered that Texas State Bank may execute against the condo, but was silent on the corporation. App. 147, Order Granting Texas State Bank's Motion For Relief From Automatic Stay.

[5] Johnny Partain v. Marvin Isgur, 7:07-cv-00016, *Order of Recusal [3]*, (U.S. District Court SDTX) (February 28, 2007), available at http://pacer.psc.uscourts.gov/; Judicial Misconduct Complaint No. 07-05-351-0011, (U.S. Court of Appeals, Fifth Circuit)(October 1, 2006 and February 6, 2007).

2007, Bankruptcy Judge Marvin Isgur issued *Memorandum Opinion On Plaintiffs' Motion For Contempt* and *Order Holding Johnny Partain In Civil Contempt* (App. 9) without evidence of contempt, for alleged infractions of the Court's *Temporary Restraining Order (TRO)* issued nearly two years earlier on March 29, 2005 and continued through *Preliminary Injunction Order (PIO)* issued on or about May 19, 2005. *Memorandum Opinion On Plaintiffs' Motion For Contempt* purports that Plaintiff collected $4450 in rents from a condominium owned and maintained by Johnny Partain and Teresa Partain, but somehow under control of James Maples pursuant to the Court's TRO and PIO. Temporary Restraining Order (App. 77); Order Granting Preliminary Injunction (App. 81); Memorandum Opinion On Plaintiffs' Motion For Contempt (App. 11); Order Holding Johnny Partain In Civil Contempt (App. 9); and Order Finding Contempt and Requiring Incarceration (App. 3). On February 27, 2007, Mr. Partain was incarcerated pursuant to said orders. On or about March 22, 2007, Mr. Partain was transported to the U.S. Courthouse wherefrom U.S. Marshal Isaac Karam attempted to negotiate a compromise between Mr. Partain and Judge Isgur for significantly reduced considerations of about $1000.00. Mr. Partain refused on the basis that he didn't want to be involved in breaches of the law, especially where death had occurred. On May 10, 2007, Mr. Partain sued out a writ of habeas corpus through Judge Crane after 72 days of imprisonment. App. 8 , Order Granting Temporary Release From Custody *Partain v. Bravo*, case no. M-07-092. On November 30, 2007, Judge Crane conceded that Global Limo, Inc. and Teresa Partain were not part of the bankruptcy and that there being no jurisdiction over the property (condominium), that it was not possible that Mr. Partain could be held in contempt. App. 149, Notice Of Hearing Transcript From November 30, 2007, Partain v. Bravo, 7:07-cv-00092, (U.S. District Court SDTX). On January 24, 2008, Judge Isgur sent *Order Terminating Civil Contempt Order* (App. 35) to Judge Crane made basis

that Judge Schmidt ruled $8200 seized (offset) from Mr. Partain in conformance with his orders the day before: There is no order responsive to Judge Isgur's *Order Terminating Civil Contempt Order*: However, Judge Schmidt did order the seizure of $94,950 from Mr. Partain on June 16, 2008, almost 5 months later, on Judge Isgur's order of contempt. App. 5, Order On Creditor, Johnny Partain's Third Complaint Of Debtor's Default Of Plan Payment. Judge Crane dismissed the habeas corpus proceedings as moot on April 17, 2008 pursuant to Judge Isgur's termination of civil contempt order. Mr. Partain motioned for amended findings of facts and reconsideration on the standing issues and undisclosed facts which remains unanswered. App. 47, Johnny Partain's Motion To Amend Findings Of Facts And Conclusions Of Law And For Reconsideration.

Recently, the 5th Circuit issued a revised Opinion per curiam on June 3, 2008 arising from complaints accruing in *Maples v. Partain*, bankruptcy case 05-07009, stating that the Court was unwilling to make a finding on the appeal. Appeals Judge Garza dissented that the Court was duty-bound to do substantial justice in deciding the appeals before it and he challenged the authority of the bankruptcy court on precedent and constitutionality; pinioning that the record and briefs [sic] "does not authorize the majority's abdication of any meaningful review of the jurisdictional issues raised below." Appendix 206, In the Matter of James H Maples; Virginia Kathleen Maples, case 07-40385, Revised Opinion (5th Circuit)(June 3, 2008). Mr. Partain petitioned for panel rehearing and hearing en banc on basis of extensive reversible error, including;

- the entry of District Court judgment in James Maples et ux. v. Johnny Partain, case 7:06-cv-00137, without hearing or record[6] while Mr. Partain was

[6] The district court was acting with appellate jurisdiction. The record for bankruptcy adversary cause no. 05-07009 was intercepted by the

imprisoned and following District Judge's recusal in associated *Partain v. Isgur*, case no. M-07-016;

- the entry of multiple documents and orders immediately following Mr. Partain's illegal incarceration by multiple courts without notice to Mr. Partain; and
- entry of erroneous findings of facts through District Judge Crane that flatly contradict the certified appeals record entered in the 5th Circuit. A panel rehearing and hearing en banc were denied and a secret mandate was sent to Judge Crane by the 5th Circuit of Appeals.

ARGUMENTS

Mr. Partain was incarcerated for collecting $4500 in rent over the period of a year on a condominium owned by Johnny Partain and Teresa Partain in 2005, but purportedly seized under Court ordered Temporary Restraining Order and Order Granting Preliminary Injunction and Order Granting Preliminary Injunction in adversary case no. 05-07009. Said incarceration is illegal for the following reasons.

MR. PARTAIN'S INCARCERATION IS ILLEGAL BECAUSE:

A. CONDOMINIUM WAS NOT ORIGINALLY SEIZED BY BANKRUPTCY JUDGE ISGUR: On or about March 28, 2005, James Maples and et ux. sued Mr. Partain through *Maples v. Partain*, case 05-07009, *Plaintiffs' Original Complaint For Injunctive Relief And Request For Temporary Restraining Order;* Appendix 71, [sic]

U.S. Marshals Service and exploded. The Bankruptcy Clerk's office was unresponsive to requests to recreate the record per FRBP 8006 and FRBP 8007 (b). Mr. Partain supplied a backup CD of the record exploded to the District Clerk directly to which Texas State Bank objected.

"Plaintiffs pray that the Court enter a temporary restraining order requiring Johnny Partain and Teresa Partain to turnover instanter to the U.S. Marshal's Service at the place of business of Global Limo, Inc. all properties seized by the Johnny Partain and Teresa Partain from the offices of Global Limo, Inc., including cash, checks, equipment, mail, and documents."[7] Judge Isgur ordered in TRO that Mr. Partain shall return items seized at Global Limo offices and ordered Lis Pendens against Partains' and Maples' properties to cloud ownership and prevent transfer: It is impossible that Judge Isgur could later rule (two years later) that Johnny Partain was in contempt for not releasing control of the condominium owned by Johnny Partain and Teresa Partain which Judge Isgur erroneously purports is in violation of TRO and PIO. See App. 77-86. There is additional error in that there is no mention of the condominium in *Plaintiffs' Original Complaint For Injunctive Relief And Request For Temporary Restraining Order* (App. 61) and the condominium didn't become a part of Maples' lawsuit until nearly 7 months after the TRO through *Plaintiffs' First Original Amended Complaint* entered on or about October 4, 2005 through suggestion of Judge Isgur.[8] *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 95 (1998) (citations and edits omitted) (stating that there is no "doctrine of hypothetical jurisdiction"). The

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[7] James Maples, a convicted fraud, made complaint on affidavit that he owned Global Limo, Inc. even after being denied ownership by two previous judges. Judge Isgur affirmed Johnny Partain's ownership of Global limo, Inc. only after destruction of the corporation 9 months later (Corporate protection was eschewed by the court).

[8] Plaintiffs' First Original Amended Complaint was filed after destruction of Global. It was an attempt to establish the jurisdiction of the bankruptcy court, but it cannot relate back and give the bankruptcy court jurisdiction when it didn't have it in the first place. Burt v. City of New Boston, 2006 WL 722102 (E.D.Tex.); USA v. Curtis, 2007 WL 683941 (S.D.Miss.)

condominium was mentioned in the TRO hearing by Mr. Partain on or about March 29, 2005, but there was no order to transfer said property to Maples or Maples' control nor were there any prior contempt hearings regarding Mr. Partain possession of the property. App. 154 – Recorded Transcript, TRO Hearing (March 29, 2005). Additionally, there was no predicate or establishment of jurisdiction to bring the condominium under the jurisdiction of the bankruptcy court. 28 U.S.C. §1334(e)(1); *Butner v. United States*, 440 U.S. 48, 54-55 (1979) (property interests, unless otherwise dictated by the bankruptcy code, are determined by reference to state law). It is unreasonable and unprecedented that an order for Lis Pendens to prevent transfer of property should be construed and interpreted by Mr. Partain as an order to transfer control or ownership of Mr. and Mrs. Partains' condominium. Before finding a party in contempt, a court must issue a reasonably specific order and the party must violate the order. The TRO, PIO, Plaintiffs' Petition, and TRO hearing transcripts show prima facie that Mr. Partain cannot be in contempt as a matter of law and fact. Mr. Partain is illegally deprived of his liberties and property.

MR. PARTAIN'S INCARCERATION IS ILLEGAL BECAUSE;

B. CONTEMPT HEARINGS REQUIRE NOTICE AND DETAILS: Mr. Partain is entitled to have written notice that provides specific details of the alleged contempt, a stated time and place for a hearing on the charges, and a reasonable response time. The Court violated these requirements because Mr. Partain was incarcerated on contempt charges not alleged by Complainants.[9] App.

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[9] James Maples prosecuted contempt, pro se, against Mr. Partain because Maples' attorney, Kelly Mckinnis, refused to prosecute contempt against Johnny Partain citing a conflict of interest.

29, Plaintiffs' Motion For Order To Show Cause And Motion For Contempt. Specifically, original complaints of contempt alleged that Mr. Partain violated the Court's PIO of May 19, 2005, by exercising control over Global Limo, Inc. and violated the Court's Judgment of April 27, 2006, by exercising control of the condominium. Mr. Partain was not found in contempt of either of these charges (no evidence), but was found guilty of exercising control of the condominium in violation of the Court's earlier May 2005 order.[10] Bennett, 298 F.3d at 1069 ("The standard for finding a party in civil contempt is well settled: The moving party has the burden of showing by clear and convincing evidence that the contemnors violated a specific and definite order of the court."). In short, Mr. Partain was found guilty of violating an earlier order that doesn't exist based on a complaint that doesn't exist. Mr. Partain did not receive due process of the law or reasonable opportunity to respond. FRBP 9020; USCA4; USCA5. Mr. Partain is illegally deprived of his liberties and property.

MR. PARTAIN'S INCARCERATION IS ILLEGAL BECAUSE;

C. SANCTIONS ARE UNAVOIDABLE AND OUTSIDE BANKRUPTCY JURISDICTION: Mr. Partain was ordered to pay significant amounts of money for an action he could not have avoided. Specifically, Mr. Partain was ordered to pay $4450 representing rents Mr. and Mrs. Partain acquired through rental of their condominium prior to orders actually seizing said

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[10] TRO and PIO do not give control of Global Limo, Inc. to Maples but only gave control of Global Limo, Inc. assets to Maples. Mr. Partain still retained control of some business decisions. In fact, Mr. Partain approved payment of insurance through hearing in cause 05-70128 in or about July 2005, because the corporation had been raped of it's cashflow, which serendipitously insured another motorcoach (unknown to exist) involved in a deadly bus fire.

property on April 27, 2006. Mr. Partain spent over $19,000 to repair the condominium because he knew it was his property with all legal rights thereto. U.S.C.A. 4. Mr. Partain did not expect and could not have avoided the $4450 sanction Judge Isgur ordered against him, so the sanction was unexpected and is not coercive. The sanction is not compensatory since it does not account for the total house budget and because Maples was not the owner or operator of the house when these rents were collected. See F.J. Hanshaw Enters., Inc. v. Emerald River Dev., Inc., 244 F.3d 1128, 1137-38 (9th Cir.2001). Global, not Maples, was the prior owner of the house so it is unprecedented that Maples could even be entitled to any considerations since Global was not a party to any litigation and the bankruptcy court has no authority over actions between non-debtors. In re Zale Corp., 62 F.3d 746, 753 (5th Cir. 1995). The contempt order is therefore punitive and criminal in nature and beyond the jurisdiction of the bankruptcy court. In re Terrebonne Fuel & Lube, 108 F.3d 609, 613 (5th Cir. 1997). Mr. Partain is illegally deprived of his liberties and property.

MR. PARTAIN'S INCARCERATION IS ILLEGAL BECAUSE;

D. CONTEMPT ORDER IS PUNITIVE, CRIMINAL, AND OUTSIDE BANKRUPTCY JURISDICTION:
Bankruptcy Court's *Memorandum Opinion On Plaitiffs' Motion For Contempt* (App. 16) reads [sic] "Partain conduct in this matter was intentional and wanton. Such conduct continued over an extended period of time not withstanding his full awareness of this Court's orders and judgments. Accordingly, it is imperative that Court issue a remedy that is appropriate to assure that Partain is deterred from continuing to ignore this Court's orders." The inescapable conclusion is that Judge Isgur's contempt order is punitive and criminal in nature which is outside the jurisdiction of bankruptcy

court and illegal. Thyssen, Inc. v. Chuen On, 693 F.2d 1171, 1173 – 74 (5th Cir. 1982) (When a contempt order contains both punitive and a coercive dimension, for purposes of appellate review it will be classified as a criminal contempt order... The ultimate test for determining the civil or criminal character of a contempt order is the apparent purpose of the trial court in issuing the contempt judgment). The words "intentional and wanton" are used to enable sanctions instead of just enforcing an order, although bankruptcy court lacks the authority to impose serious punitive sanctions under its contempt authority. In re Dyer, 322 F.3d 1178. "When a court uses its inherent powers to impose sanctions that are criminal in nature, it must provide the same due process protections that would be available in a criminal contempt proceeding," including the right to a jury trial." Hanshaw, 244 F.3d at 1139-40. "[D]ue process guarantees need to be observed when a court resorts to its inherent power to punish misconduct simply because those powers are enormous; the procedural guarantees are the restraint that protects against intended or unintended abuse of that power." Id. at 1139. Judge Isgur did not specify exactly how many orders, which orders, or for what period Mr. Partain was being punished, but Mr. Partain was illegally and unconstitutionally incarcerated and punished on said hazy accusations and orders from Judge Isgur. In Terrebonne Fuel & Lube, 108 F.3d 609, 613 (5th Circuit 1997) - Bankruptcy Court has no authority to issue criminal contempt orders; FDIC v. LeGrand, 43 F.3d 163, 168 (5th Circuit 1995) "The ultimate test for determining the civil or criminal character of a contempt order is the apparent purpose of the trial court in issuing the contempt judgment,' a punitive purpose or one 'designed to vindicate the authority of the court' establishing the criminal nature of the order, while a coercive or remedial purpose characterizes a civil contempt."; Armstrong v. Capshaw, Goss & Bowers, 404

F.3d. 933, 936 (5th Circuit 2005). Regardless of how Judge Isgur colors his orders, Judge Isgur continues to threaten Mr. Partain with criminal confinement through *Order Terminating Civil Contempt Order* (App. 35) [sic], "The Court is aware of Mr. Partain's habeas petition pending before Judge Crane. If Judge Crane should determine that this Court's February 27, 2007 order was correctly issued, he could determine that Mr. Partain must be confined based on that order."[11] This intimidation is intended to cause anxiety and concern in Mr. Partain, to cause further injury, and to reinforce the criminal nature of Mr. Isgur's orders for further action by this Court. When a contempt action is not clearly specified as criminal or civil and a single order is entered granting both punitive and remedial relief, the criminal feature of the order is dominant and fixes its character for purposes of review. See Penfield Co. v. SEC, 330 U.S. 585, 591 (1947); Union Tool Co. v. Wilson, 259 U.S. 107, 110 (1922); Falstaff Brewing Corp. v. Miller Brewing Co., 702 F.2d 770, 778 (9th Cir. 1983). Mr. Partain is illegally deprived of his liberties and property.

MR. PARTAIN'S INCARCERATION IS ILLEGAL BECAUSE;

E. BANKRUPTCY ORDERS ARE VOID AB INITIO: Judge Isgur's finding of contempt and ensuing incarceration of Plaintiff is illegal because a court lacks jurisdiction to enforce orders that are void ab initio. App. 149, Notice Of Hearing Transcript From November 30, 2007; App. 206, In the Matter of James H Maples; Virginia Kathleen Maples, case 07-40385, Revised Opinion (5th Circuit)(June 3, 2008). A void judgment is

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[11] *Order Terminating Civil Contempt Order* was sent directly to Judge Crane as ordered by Judge Isgur on January 24, 2008 after a verbal ruling by Judge Schmidt to seize $8200 from Johnny Partain on January 23, 2008.

one which, from its inception, is a complete nullity and without legal effect. Lubben v. Selective Service System, 453 F.2d 645, 649 (1st Cir. 1972).

Judge Isgur violated 28 U.S.C. 1738 by ignoring Hidalgo County Court at Law No. 1 orders identifying Mr. Partain's ownership of all legal and equitable interest in Global. App. 77, Temporary Restraining Order, footnote 1; App. 57, Partain v. Maples, CL-29,530-A, Order (Hidalgo County Court at Law no. 1). Judge Isgur could not establish subject matter jurisdiction and should have declined to entertain Plaintiffs' Original Complaint For Injunctive Relief And Request For Temporary Restraining Order.

Before federal courts can exercise jurisdiction, procedural requirements of service of summons must be satisfied. Jose Maiz et al. v. Amir Virani, et al, 311 F.3d 334 (5th Cir., 2002); FRCP 4. Bankruptcy court in adversary cause no. 05-07009 is a court of limited jurisdiction and never acquired personal or subject matter jurisdiction over Teresa Partain or Global from which to order seizure of property or to enjoin management. This lack of jurisdiction is reflected prima facie in the Court's docket. App. 211, Court Docket (no service or answer to or by Teresa Partain or Global Limo, Inc.)(note that Judge Isgur misrepresents in his TRO and other orders that parties, alleging Mrs. Partain, appeared in his Court when Mrs. Partain has never actually ever been to the Federal courthouse).

Judge Isgur's TRO, PIO, and final Judgment are orders void ab initio because the orders purport to enjoin and eventually seize a condominium from Johnny Partain and Teresa Partain through bankruptcy avoidance law application on Global, whom is not in bankruptcy or even a Creditor to a bankruptcee, and then to seize

Global and it's assets for inclusion into Maples' Bankruptcy estate. Global is a third non-party legal entity which has also not filed for bankruptcy or been placed into bankruptcy through any known bankruptcy law. In re Zale Corp., 62 F.3d 746, 753 (5th Cir. 1995). Global was illegally seized by Judge Isgur merely to appease Texas State Bank whom later claimed the company didn't affect Maples' bankruptcy anyway. App. 140, Texas State Bank's Motion For Relief From The Automatic Stay. Global and any legal transaction between Global and Johnny Partain and Teresa Partain fall outside any bankruptcy estate or core bankruptcy matter. 28 U.S.C.§157. Mr. Partain and Global Limo, Inc. are illegally deprived of liberties and property.

MR. PARTAIN'S INCARCERATION IS ILLEGAL BECAUSE;

F. MR. PARTAIN CANNOT BE LEGALLY COERCED TO BREAK THE LAW: Global has incurred the liability of 23 deaths and has been convicted of fraud and conspiracy after it's seizure and operation of it's assets by a trustee of the court in cause 05-07009 on enforcement of void bankruptcy court orders. Pursuant to 18 U.S.C.§242 and 18 U.S.C.§3, a party may suffer life incarceration or death for participating in a criminal activity under the color of law. Mr. Partain cannot be coerced to violate his rights or the rights of another or to participate in process "under color of law" which could ultimately lead to such severe punishments. How does a federal judge operating in malfeasance escape liability? Mr. Partain and Global Limo, Inc. are illegally deprived of liberties and property.

MR. PARTAIN'S INCARCERATION IS ILLEGAL BECAUSE;

G. JUDGE ISGUR SHOULD HAVE RECUSED HIMSELF: Mr. Partain has participated in various hearings with

Judge Isgur. As a result of rash accusations and rulings by the bankruptcy judge, Mr. Partain did not feel justice was being done and filed appeals, complaints, a lawsuit, and motions to disqualify all directed at the Honorable Marvin Isgur. App. 26, Second Motion For Disqualification of Judge Isgur and Notice of Criminal Complaints Against Judge Isgur And Other Parties Hereto; App. 18, Objection To Memorandum Opinion On Plaintiffs' Motion For Contempt And Order For Contempt. Pursuant to 28 U.S.C.§455(a), Judge Isgur should have disqualified himself at least twice and should have allowed another judge without bias or personal interest to proceed with cause no. 05-07009 and any contempt orders. Mr. Partain does not have equal protection of the law and has not received due process or a meaningful hearing. Mr. Partain is illegally deprived of liberties and property.

MR. PARTAIN'S INCARCERATION IS ILLEGAL BECAUSE;

H. PARTAINS' CONDOMINIUM DOES NOT AFFECT BANKRUPTCY: Johnny Partain and Teresa Partain were and are presently the sole legal owners of a house described as the East 18.41 feet of the West 60.82 feet of Lot 37, El Cazador Subdivision, Unit No. 2, an addition to the City of McAllen, Hidalgo County, Texas, according to map thereof recorded in volume 19, page 58 of the Map Records of Hidalgo County. This property was not owned or transfer from James Maples or Kathleen Maples, Debtors in Bankruptcy, but by Global Limo, Inc. to Johnny Partain and Teresa Partain. App. 59, Special Warranty Deed. Since Global Limo, Inc. is not in bankruptcy, bankruptcy rules cannot be applied to avoid Johnny Partain's or Teresa Partain's ownership of the house. See App. 183, Recorded Transcript, Docket Call McAllen Bankruptcy Court (October 25, 2006) (p. App. 191, Barbara Jue, United State Trustees Office [sic] – "Global Limo, Inc. is not today and never has been in

bankruptcy"); App. 114, Order Denying Partain's Motion To Disqualify (p. App. 117, Judge Isgur [sic] - Global Limo is neither a Debtor nor a party in interest before this Court"); App. 119, Debtor's Second Amended Plan Of Reorganization (Global Limo, Inc. is not being reorganized). Moreover, the seized house does not affect the handling or administration of Maples' bankruptcy estate in any way meaning it is not a core bankruptcy issue. To wit, a final order has been issued to allow Texas State Bank to execute against the house. App. 140, Texas State Bank's Motion For Relief From The Automatic Stay; App. 147, Order Granting Texas State Bank's Motion For Relief From Automatic Stay. Bankruptcy court orders in cause 05-07009 to seize, control, and annex Global Limo, Inc. and it's assets; and through Global Limo, Inc. to seize Johnny Partain's and Teresa Partain's house for inclusion into Maples' estate are void ab initio through lack of subject matter jurisdiction of the bankruptcy court. 28 U.S.C. § 157(b)(1). Global Limo, Inc. is a legal corporation, not an asset, and the bankruptcy courts cannot legally control or reach through a non-litigant non-bankrupt legal individual to seize Johnny Partain's and Teresa Partain's assets using bankruptcy laws. See Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 94-95 (1998); In re Zale Corp., 62 F.3d 746, 753 (5th Cir. 1995). Mr. Partain and Global Limo, Inc. are illegally deprived of liberties and property.

In June of 2008, Bankruptcy Judge Schmidt ordered the seizing of $94,500 from Mr. Partain to justify an order entered by Judge Crane to dismiss the habeas corpus case on mootness in cause no. M-07-092 pursuant to Bankruptcy Judge Isgur's contempt orders against Mr. Partain in cause no. 05-07009. Said seizure is illegal for the following reasons.

SEIZURE OF MR. PARTAIN'S MONIES OR INTERESTS IS ILLEGAL BECAUSE:

I. SEIZURE IS EXCESSIVE, PUNITIVE, AND OUTSIDE BANKRUTPCY JURISDICTION: Judge Schmidt recently seized $94,950 from Mr. Partain through *Order On Creditor, Johnny Partain's, Third Complaint Of Debtors' Default Of Plan Payment* (App. 5) in bankruptcy case no. 05-70128. This order neither coerces compliance for contempt nor compensates anyone for actual damages. It is therefore a criminal contempt sanction and Mr. Partain has not been accused, indicted, or faced a jury as required for criminal sanctions. In re Dyer, 322 F.3d 1178. The order is extremely excessive and outside the authority of Judge Schmidt. USCA 4; USCA 5; USCA 8; USCA 9; Hanshaw, 244 F.3d at 1138; In re Dyer, 322 F.3d 1178; and 11 USC §105. Contempt power conferred under 11 U.S.C. §105 authorize only those remedies "necessary" to enforce the bankruptcy code and contains no explicit grant of authority to award punitive damages. Mr. Partain is illegally deprived of liberties and property.

SEIZURE OF MR. PARTAIN'S MONIES OR INTERESTS IS ILLEGAL BECAUSE

J. CONTEMPT ORDER IS NOT FINAL AND HENCE UNENFORCEABLE UNDER HABEAS CORPUS JURISDICTION: The habeas corpus case no. M-07-092 is not final and is being reviewed for findings of fact and conclusion of law purportedly on an order of MOOTNESS by Judge Crane while Judge Schmidt continues to seize Mr. Partain's interest pursuant thereto. By the common law, upon the return of a writ of habeas corpus and the production of the body of the party suing it out, the authority under which the original commitment took place is superseded. After that time, and until the case is finally disposed of, the safekeeping of the prisoner is entirely under the control and direction of the court to which the return is made.

The prisoner is detained, not under the original commitment, but under the authority of the writ of habeas corpus and the challenged orders cannot be considered final orders since they are not legally enforceable and are reviewable under habeas corpus without res judicata. 28 U.S.C §2243 "The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require." Since the District Court's habeas corpus jurisdiction has been satisfied on issues addressed in *Original Petition For Habeas Corpus*, Judge Schmidt cannot subvert the District Court's jurisdiction to seize money from Mr. Partain to appease Judge Isgur to moot the habeas corpus under Judge Crane. See App. 35, Order Terminating Civil Contempt Order; App. 5, Order On Creditor, Johnny Partain's, Third Complaint Of Debtors' Default Of Plan Payment; App. 37, Order Dismissing Habeas Corpus As Moot. Mr. Partain is illegally deprived of liberties and property.

SEIZURE OF MR. PARTAIN'S MONIES OR INTERESTS IS ILLEGAL BECAUSE

K. CONTEMPT ORDER DOES NOT AUTHORIZE SEIZURE: In arguendo that *Order Finding Contempt And Requiring Incarceration* (Appendix 1) is a legal and enforceable order, the order terminates accrual of the $250 daily sanction for nonpayment "on entry of the order." Therefore, Judge Schmidt again has no authority or basis to seize $94,500 from Mr. Partain. Mr. Partain is illegally deprived of liberties and property.

SEIZURE OF MR. PARTAIN'S MONIES OR INTERESTS IS ILLEGAL BECAUSE

L. JUDGE SCHMIDT LACKS AUTHORITY TO SEIZE PARTAINS' MONEY: Judge Schmidt does not have authority to setoff or recoup monies from Mr. Partain for

Maples benefit. A setoff is the cancellation of cross demands between two parties. This term applies to judicially supervised setoffs and the automatic and contractual extinction of cross demands. 11 U.S.C. §553 of the Bankruptcy Code limits prepetition setoffs. Section 553 provides that the right of setoff is not affected by the filing of a bankruptcy case so long as mutual debts existed between the parties before commencement of the case. Therefore, a creditor's prepetition claim generally can be offset against that creditor's prepetition debt to a bankruptcy debtor. However, prepetition claims generally cannot be offset against postpetition debts. Regardless, the Bankruptcy Code does not create a right of setoff. Citizens Bank Of Maryland v. Strumpf, 516 U.S. 16 (1995)

"Recoupment is a defense that goes to the foundation of a plaintiff's claim by deducting from plaintiff's recovery all just allowances or demands accruing to the defendant with respect to the same contract or transaction." Distribution Servs. Ltd. v. Eddie Parker Interests Inc., 897 F.2d 811, 812 (5th Cir. 1990); United States v. Gerth, 991 F.2d 1428, 1431 (8th Cir. 1993). Matter of Coxson, 43 F.3d 189, 193-94 (5th Cir. 1995) (where creditor's and debtor's obligations arise out of the same contract recoupment is appropriate). Setoff and recoupment theories don't apply to Maples' bankruptcy claim since Mr. Partain's creditor claims against Maples et. al. are derived from Maples' intentional fraud, and Maples' claim can only be construed as a penalty against Mr. Partain for refusing to pay prior rents from a condominium owned by Mr. and Mrs. Partain to Maples. Mr. Partain is illegally deprived of liberties and property.

CONCLUSION

Punitive fines and incarceration ordered by Bankruptcy Judge Isgur and Judge Schmidt, and continued threat of punitive incarceration by Judge Isgur tolls *United States Constitution Amendment 6* that Mr. Partain is entitled to a speedy trial since Mr. Partain is being treated as a criminal by these courts. Judge Crane has violated that right through complacency and probable complicity in habeas corpus case no. M-07-092, Partain v. Bravo. United States v. Marion, 404 U.S. 307, 313 , 320, 322 (1971). It has been 21 months since Mr. Partain was first incarcerated and delays to address the issues of his illegal incarceration are presumptively prejudicial and expose Mr. Partain to further criminal or punitive injury by the bankruptcy courts.

Through final state court order, Mr. Partain is now firmly in control of Global Limo, Inc. mooting an illegal injunction order and a petition for writ of certiorari to this Supreme Court on the 5th Circuits refusals to adjudicate Mr. Partain's complaints earlier this year. However, Global Limo, Inc. is still burdened by injuries wrought against it by the bankruptcy courts, including criminal fines in federal case no. 7:06CR00076-S1-001 in the Southern District of Texas, federal liens, and severe loss of reputation. Theoretically, Mr. Partain could file tort claims against the judiciary but the permissive cooperation between Judge Crane, Judge Isgur, and Judge Schmidt to steer Mr. Partain's complaints to the judge's desired conclusion behind the scenes and off the record severely compromise Mr. Partain's rights to due process and implicate that the judiciary places it's own interests and people first notwithstanding the law through self-proclaimed immunity and collaboration.[12] The judges have put Mr. Partain into a difficult adversarial position against

[12] Mr. Partain sued Judge Isgur for a declaratory judgment in case no. M-07-016, Partain v. Isgur which was dismissed on basis that judges are absolutely immune to lawsuits, regardless of the type of lawsuit or the arguments and evidence to lack of jurisdiction.

the judiciary which requires substantive resolution by this Court.

It is clear that Mr. Partain, Global Limo, Inc., and the public have been substantially injured through the malfeasance of Judge Isgur. It is incumbent on this Court to protect the honor and integrity of the United States judicial system by taking action to cure abuses and complicity within it ranks.

PRAYER

WHEREFORE PREMISES CONSIDERED

- Mr. Partain prays this Court grants and issues a writ of habeas corpus to Federal Judge Randy Crane to show cause why Mr. Partain should not be completely discharged from his illegal restraint and that Mr. Partain is discharged from all restraints and claims.
- Mr. Partain prays this Court enters a declaratory judgment vacating all contempt orders against Mr. Partain in cause no. 05-07009 (App. 3, 9, 11) and vacating the injunction in Judgment (App. 111) for want of jurisdiction.
- Mr. Partain prays this Court vacates the criminal findings and fines adjudge against Global Limo, Inc. in USA v. Global, 7:06-cr-00076 (SDTX) for want of culpability and standing.
- Mr. Partain prays this Court grants and issues a writ of habeas corpus to Bankruptcy Judge Schmidt directing and commanding the production $94,950.00 before this Honorable Court instanter, then and there to show cause, if there may be, why said monies should not be released from seizure.
- Mr. Partain prays the Court withdraws the reference from Judge Isgur in all proceedings involving Mr.

Partain and/or Global Limo, Inc. and any other businesses operated by either.

- Mr. Partain prays the Court takes judicial notice of the record in USA v. Global, 7:06-cr-00076 (SDTX); In re Maples,05-70128, (SDTX); Partain v. Maples, 05-07009, (SDTX); In re Maples, M-07-092, (SDTX); Partain v. Isgur, M-07-016, (SDTX); and In re Maples, 07-40385, (5th Circuit).
- Mr. Partain prays for all other relief in equity and in law he may be entitled.

Respectfully Submitted,

JOHNNY PARTAIN
7020 N 16th Street
McAllen, Texas 78504
956-240-1821

VERIFICATION

I, Johnny Partain, verify that I have personal knowledge of the statements made in the above Petition For Writ Of Habeas Corpus and do hereby swear they are correct and true as represented under the penalty of perjury pursuant to 29 U.S.C. §1746.

Executed this day December 12, 2008.

JOHNNY PARTAIN

In The Supreme Court of the United States

Case No. _____

In Re JOHNNY PARTAIN

JOHNNY PARTAIN
Petitioner

v.

RANDY CRANE;
RICHARD SCHMIDT;
MARVIN ISGUR
Respondents

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

IN RE:	§	
JAMES HOWARD MAPLES; fdba	§	CASE NO:
GLOBAL TOURS & CHARTERS, *et al*	§	05-70128
Debtor(s)	§	
	§	CHAPTER 11
JAMES HOWARD MAPLES, *et al*	§	
Plaintiff(s)	§	
VS.	§	
	§	ADVERSARY NO.
JOHNNY PARTAIN, *et al*	§	05-7009
Defendant(s)	§	

ORDER FINDING CONTEMPT AND REQUIRING INCARCERATION

On February 27, 2007, this Court held a hearing to determine whether Partain complied with this Court's order dated January 23, 2007. That order held Partain in civil contempt and required payment of $4,450 to the "James Maples Bankruptcy Estate." It also imposed daily, coercive sanctions. With the daily sanctions, Partain now owes $8,200. At the February 27th hearing, Partain stated that he had not complied with the Court's contempt order because he did not have the funds to make a payment.

When an individual who is the subject of a civil contempt order requiring a payment fails to comply on the asserted basis of financial inability, that individual bears the burden of establishing an inability to pay. S.E.C. v. AMX, Intern., Inc., 7 F.3d 71, 73 (5th Cir. 1993). The defense of "inability to pay" must be established by a preponderance of the evidence. S.E.C. v. Huffman , 996 F.2d 800, 803 (5th Cir. 1993). An individual must prove an inability to pay with objective evidence that is plain and unmistakable. Id. A court "is not bound, however, to accept ... unsubstantiated self-serving testimony as true." Id.

Partain did not offer any evidence of his inability to pay other than his own unsubstantiated self-serving testimony.

Partain orally testified that no bank accounts under his own name were sufficient to satisfy the $8,200 due to the Maples Estate. Partain testified that some funds existed in accounts not wholly owned by him, but on which he had check writing authority. When questioned by the Court as to the ownership of these accounts and funds, Partain offered an incomprehensible explanation, refusing to identify the ultimate human owner of various trusts and corporations.

Absent any objective evidence regarding Partain's inability to pay the sums ordered by the Court, the Court finds Partain in contempt of court. See In re Terrebonne Fuel & Lube, Inc ., 108 F.3d 609, 613 (5th Cir. 1997) ("a bankruptcy court can issue any order, including a civil contempt order, necessary or appropriate to carry out the provisions of the bankruptcy code."); 11 U.S.C. § 105. Consequently, the Court holds Partain in civil contempt and orders that he be incarcerated until he has paid the $8,200 due to the Maples Estate. The accrual of the $250 daily sanction for nonpayment terminates on entry of this order, since Partain's incarceration is intended to coerce compliance.

SIGNED 02/27/2007.

/s/ Marvin Isgur
MARVIN ISGUR
United States Bankruptcy Court

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

IN RE:	§	CASE NO:
JAMES HOWARD MAPLES; fdba	§	05-70128
GLOBAL TOURS & CHARTERS,	§	
VIRGINIA KATHLEEN MAPLES	§	CHAPTER 11
Debtor(s)	§	

ORDER ON CREDITOR, JOHNNY PARTAIN'S THIRD COMPLAINT OF
DEBTORS' DEFAULT OF PLAN PAYMENT

On this day came on for consideration the Third Complaint of Debtors' Default of Plan Payment filed by creditor, Johnny Partain ("Partain"). The Court, having heard the arguments of counsel and of Partain, pro se, makes the following findings.

The Chapter 11 Plan of Reorganization ("Plan") in this case was confirmed by Order entered August 22, 2007. The Plan and Disclosure Statement list Partain as a secured creditor. No appeal of the Order Confirming Plan was filed and it is now final. The Plan provides for payment of Partain's secured claim over 72 months with interest at the rate of 10% per annum. The Debtors now challenge the amount owed Partain under the Plan on the grounds that his claim is not secured because he failed to file a corrected abstract of judgment to secure his debt. Debtor's argument fails for two reasons.

First, the Plan is *res judicata* on the issue of Partain's secured claim. Neither the Plan nor the Disclosure Statement mention Debtor's current challenge to Partain's secured status. An order confirming a chapter 11 plan is a final judgment and the *res judicata* effect binds both the debtor and the creditor. *Republic Supply v. Shoaf*, 815 F.2d 1046 (5th Cir. 1987).

Second, Debtors fail to take into account the holding of Judge Isgur in Adversary Proceeding No. 05-7009, in which Judge Isgur held that the debt owed to Partain is

nondischargeable. When a debt is held non-dischargeable, the interest accompanying compensatory damages is also non-dischargeable. *Matter of Gober*, 100 F.3d 1195, 1208 (5th Cir. 1996); *Matter of Jordan*, 927 F.2d 221, 226-28 (5th Cir. 1991); *In re Christian*, 111 B.R. 118, 122-23 (Bankr.W.D.Tex. 1989). Accordingly, even if Partain's claim is not secured, it nevertheless accrues interest until paid because it was determined to be nondischargeable.

In the Adversary Proceeding Judge Isgur also held Partain in contempt and awarded monetary sanctions. When this Court held that Partain could offset the amount he owed for sanctions against the amount the Debtor owed Partain, Judge Isgur purged Partain of his contempt from January 23, 2008, forward.

The ultimate question in this case is how much each party owes the other. Following the holdings above, the Court calculates as follows:

Debt owed by Debtor to Partain: Third Amended Judgment entered 2/27/03: $93,200.00 + 10% interest per annum
Accrued interest 2/27/03 to 1/23/08 45,730.43
Total amount owed as of 1/23/08 $138,930.43

Debt owed by Partain to Debtor: Contempt Order Entered 1/23/07 $ 4,450.00
Daily contempt 1/27/07 – 1/23/08 90,500.00
Total amount owed as of 1/23/08 $ 94,950.00

Based on the above calculations, Debtor owes Partain $43,980.43, as of January 23, 2008, which amount continues to accrue interest from that date forward at the rate of 10% per annum.

It is so ORDERED
Dated: 06/16/2008

/s/Richard S. Schmidt

- Appendix 7 -

RICHARD S. SCHMIDT
United States Bankruptcy Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

JOHNNY PARTAIN,	§	
Petitioner,	§	
VS.	§	CIVIL ACTION NO. M-07-92
	§	
BRAVO, *et al*,	§	
Respondent.	§	

ORDER GRANTING TEMPORARY RELEASE FROM CUSTODY

After considering the Petition for Writ of Habeas Corpus filed by Petitioner in the above referenced matter, this Court sua sponte hereby **ORDERS** the immediate release from custody of Petitioner Johnny Partain pending final ruling on the merits of his Habeas claims. The Clerk of Court is ordered to provide a copy of this order to the United States Marshal.

The Clerk of Court is ordered to provide a copy of this order to the United States Marshal.

SO ORDERED this 10th day of May, 2007, at 4:15 p.m., at McAllen, Texas.

/s/Randy Crane
Randy Crane
United States District Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

IN RE:	§	
JAMES HOWARD MAPLES; fdba	§	CASE NO:
GLOBAL TOURS & CHARTERS, *et al*	§	05-70128
Debtor(s)	§	
	§	CHAPTER 11
JAMES HOWARD MAPLES, *et al*	§	
Plaintiff(s)	§	
VS.	§	
	§	ADVERSARY NO.
JOHNNY PARTAIN, *et al*	§	05-7009
Defendant(s)	§	

ORDER HOLDING JOHNNY PARTAIN IN CIVIL CONTEMPT

For the reasons set forth in a separate memorandum opinion, the Court orders:

1. Johnny Partain is in civil contempt of this Court.
2. Not later than 12:01 p.m. on January 26, 2007, Partain shall pay $4,450 to the "James Maples Bankruptcy Estate," with payment to be made in cash or by cashier's check. Payment must be actually received by Maples by that date and time.
3. If Partain does not comply, Partain will be required to pay an additional $250 per day for each day of non-compliance. The first $250 daily sanction, if any, accrues at 12:02 on each day thereafter.
4. If Partain fails to comply with paragraph #1 above, he may comply with this order only by paying the $4,450 plus all accrued daily sanctions.
5. Not later than 12:01 p.m. on January 31, 2007, Partain and Maples shall each file a certificate with the Court setting forth the status of Partain's compliance with this order.
6. The Court will conduct a further hearing if the certificates reflect either (i) Partain has not complied

with this order; or (ii) there is a dispute about whether Partain complied with this order. The hearing will be at 1:30 p.m. on February 27, 2007. The hearing will be at the United State Courthouse in Brownsville, Texas. If Partain is not in compliance with this order at that time, the Court will consider what remedies will appropriately coerce compliance with this order. Such remedies may include additional monetary sanctions, incarceration pending full compliance with this order, or other appropriate actions.

7. All requests for relief in the nature of a criminal contempt are denied.

Signed at Houston, Texas, on January 23, 2007.

/s/ Marvin Isgur
MARVIN ISGUR
United States Bankruptcy Court

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

IN RE:	§	
JAMES HOWARD MAPLES; fdba	§	CASE NO:
GLOBAL TOURS & CHARTERS, *et al*	§	05-70128
Debtor(s)	§	
	§	CHAPTER 11
JAMES HOWARD MAPLES, *et al*	§	
Plaintiff(s)	§	
VS.	§	
	§	ADVERSARY NO.
JOHNNY PARTAIN, *et al*	§	05-7009
Defendant(s)	§	

MEMORANDUM OPINION ON PLAINTIFFS' MOTION FOR CONTEMPT

James Maples and his wife filed a chapter 11 bankruptcy petition on February 16, 2005. This adversary proceeding was commenced on March 28, 2005, alleging that Johnny Partain had seized some of Maples' assets (including interests in Global Limo, Inc. ("Global")) through a pre-petition state court lawsuit. In the pre-petition lawsuit, the state court ordered the turnover of various assets by Maples to Partain.

Maples sought a temporary restraining order against Partain. On March 29, 2005 the Court issued the requested temporary restraining order. The order required that all of the assets seized under the state court's order be returned to Maples, with the return to be accomplished by 5:00 p.m. on March 30, 2005. By its terms, the order was to expire at 6:30 p.m. on April 8, 2005. At a hearing conducted at 4:00 p.m. on April 8, 2005, Partain requested an opportunity to retain counsel and agreed to an extension of the order as a preliminary injunction.

On April 15, 2005, Partain filed a motion to vacate the order (and presumably the preliminary injunction). The motion to vacate was denied by order issued on May 17,

2005. On May 19, 2005, the Court issued its preliminary injunction that imposed a continuing duty on Partain to "refrain from exercising control of any assets under the control of Maples." *Maples v. Partain,* No. 05-07009 (Bankr. S.D. Tex. May 19, 2005)(order granting preliminary injunction).

Following a trial on the merits, the Court issued its judgment on April 27, 2006. In its final ju8dgment, the Court avoided all of the pre-petition transfers received by Partain. The Court also found that Maples; bankruptcy discharge did not discharge Maples' liability on the Third Amended Judgment issued in Partain's favor by the Hidalgo County Court at Law#1 in case CL29,530-A.

In summary, this Court's March 29, 2005, order returned control of all seized assets to Maples. On May 19, 2005, Partain was enjoined from exercising any control over any of those assets.

Partain has consistently believed that this Court exceeded its authority in issuing its orders. Among other things, Partain unsuccessfully appealed the preliminary injunction. On appeal, the District Court found that the appeal was moot. However, the District Court additionally found:

> Assuming, *arguendo*, that the instant appeal was not mooted, this Court would nevertheless affirm the bankruptcy court's grant of a preliminary injunction. A preliminary injunction was necessary in order to prevent a dissipation of Appellees' business due to an inablility to utilized estate property. (Doc. 1, att. 1, pg. 39). Specifically, this Court concludes that the record establishes that a preliminary injunction was appropriate as there is (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable harm if the injunction was not granted; 93) the threatedned injury to the movant outweighed any harm to the nonmovant that would have resulted from the injunction; and (4) that such injuction would not have undermined the public interest.

Partain v. Maples, No. M-05-257 (S.D. tex. Feb. 8, 2006)(Order finding mootness or in the alternative affirming preliminary injunction order). Partain has also appealed the judgment in this case. No decision has been issued on the appeal.

On October 30, 2006, Maples filed a motion seeking to have Partain held in contempt for an alleged pattern of abuse and disregard of this Court's order. Partain responded on November 20, 2006. The Court held an evidentiary hearing on January 22, 2007.

Partain initially objected to the hearing on the grounds that Maples was seeking criminal sanction against Partain. This Court has no authority to issue criminal sanctions if the sanctions are intended to punish previous out-of-court comtemptuous conduct. *In re Terrebonne Fuel & Lube,* 108 F.3d 609, 613 (5th Cir. 1997). Maples announced that he was seeking only civil contempt against Partain. Partain then withdrew his objection to the proceeding. The Fifth Circuit has summarized the distinction between civil and criminal contempt as follows:

> A contempt order is characterized as civil or criminal based on its primary purpose. FDIC v. LeGrand, 43 F.3d 163, 168 (5th Cir. 1995). "[T]he ultimate test for determining the civil or criminal character of a contempt order is 'the apparent purpose of the trial court in issuing the contempt judgment,' a punitive purpose or one 'designed to vindicate the authority of the court' establishing the criminal nature of the order, while a coercive or remedial purpose characterizes a civil contempt." *Thyssen, Inc. v. S/S Chuen On*, 693 F.2d 1171, 1173-74 (5th Cir. 1982) (quoting *Smith v. Sullivan*, 611 F.2d 1050, 1053 (5th Cir. 1980)). "When a contempt order contains both a pu8nitive and a coercive dimension, for purposes of appellate review it will be classified as a criminal contempt order." *LeGrand*, 43 F.3d at 168.

Clark v. Mortenson, 93 Fed. Appx. 643, 651 (5th Cir. 2004). Although Plaintiffs contend their motion seeks civil

contempt, the Court should not be bound by the labels affixed by the parties. *See Armstrong v. Capshaw, Goss& Bowers,* 404 F.3d 933, 936 (5th Cir.2005). Rather, the Fifth Circuit has held that courts may look to the substance of pleadings rather that the labels stated in pleadings in determining what relief the movant seeks. *See Armstrong v. Capshaw, Goss& Bowers,* 404 F.3d 933, 936 (5th Cir.2005) (noting district courts must determine the tru8e nature of a pleading by its substance, rather than its labels) (citing *Edwards v. City of Houston,* 78 F.3d 983, 995 (5th Cir. 1996) (en banc) ("[W]e have oft stated that 'the relief sought, that to be granted, or within the power of the Court to grant, should be determined by substance, not a label.'") (quoting *Bros. inc. v. W.E. Grace Mfg. Co.,* 320 F.2d 594, 606 (5th Cir. 1963)).[1]

While the foregoing deals with titling pleadings, the Court finds the same principle applicable to the plaintiffs' motion for contempt. Most of the relief sought by Maples complains that Partain has consistently disregarded the Court's orders and judgments by exercising control over Global. However, Maples introduced no evidence that Partain continued to exercise such control or that any damages had resulted from Partain's conduct. The remedy requested by Maples for the alleged conduct was that the Court impose a sanction against Maples equal to Partain's non-discharged claim against Maples. Maples requested the sanction to punish Partain for his alleged past bad acts. The Court concludes that all such relief is criminal in nature. *See Clark,* 93 Fed. Appx. At 651. This court

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[1] The Court in *Edwards* looked to the substance of the plaintiffs' motion filed under the heading of "Objection to Order of Dismissal" and considered the motion as either a motion to alter or amend the judgment or a motion for relief from the judgment. *Edwards,* 78 F.3d at 995. Similarly, the Fifth Circuit has ruled that a "motion for reconsideration," which is not recognized under the Federal Rules, was properly treated as a motion to alter or amend or a motion for relief from judgment. *Lavespere v. Niagara Mach & Tool Works, Inc,* 910 F.2d 167, 173 (5th Cir. 1990).

declines to consider matters outside of the Court's authority.

However, one of Maples' complaints concerns Partain's exercise of control over a condominium. The testimony is undisputed that Partain continued to exercise control over the disputed condominium will after the effective date of the Court's preliminary injunction. Since the issuance of the May 2005 preliminary injunction, Partain collected $4,450 in rents from the tenant in the condominium.

Partain's defense of his conduct was two-fold. First, Partain alleged that this Court has been erroneously issuing its orders and judgments. Partain requested a continuance of the hearing so that he could obtain transcripts reflecting that the United States trustee and Judge Schmidt agreed that this Court's judgment was issued in error. The Court denied the motion for a continuance. This Court's orders and judgments will be enforced unless they are reversed on appeal. Even if such statements were made by Judge Schmidt or by the United State trustee, they are of no consequence. To the extent that Partain want the Court to reverse its own judgment based on statements allegedly made by Judge Schmidt or by the United States trustee, the Court is powerless to consider the relief. Now that the judgment has been appealed, only the appellate court may modify the judgment.[1]

Second, Partain alleged that the condominium at issue was not governed by the Court's prior orders. Partain's reasoning is – to be charitable – disingenuous. Partain alleges that the condominium was owned by Global. After

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[1] For the purpose of this ruling, the Court assumes that the United State trustee and Judge Schmidt made the statements attributed to them by Partain. However, there is no evidence before the Court that the statements were actually made as portrayed by Partain. Similarly, by indicating that this Court has no power to modify its own judgment, the Court does not imply that it believes any modification is appropriate. On the contrary, the Court's judgment appears to have been a correct application of the law to the facts.

the state court ordered that Partain was the owner of the Global stock, Partain asserts that he transferred the condominium to himself. Thus, Partain believed that this Court's order requiring Partain to return all seized asset to Maples did not require the return of the condominium. By stripping the condominium out of Global, Partain alleges that he immunized it from the Court's rulings. The Court finds Partain's gamesmanship to be unavailing. The condominium was not insulated by Partain's conduct.

Partain's conduct in this matter was intentional and wanton. Such conduct continued over an extended period of time notwithstanding has full awareness of this Court's orders and judgments. Accordingly, it is imperative that the Court issue a remedy that is appropriate to assure that Partain is deterred from continuing to ignore this Court's orders.

The Court will issue a separate order holding Partain in civil contempt and compelling the following:

1. Not later than 12:01 p.m. on January 26, 2007, Partain shall pay $4,450 to the "James Maples Bankruptcy Estate," with payment to be made in cash or by cashier's check. Payment must be actually received by Maples by that date and time.
2. If Partain does not comply, Partain will be required to pay an additional $250 per day for each day of non-compliance. The first $250 daily sanction, if any, accrues at 12:02 on each day thereafter.
3. If Partain fails to comply with paragraph #1 above, he may comply with this order only by paying the $4,450 plus all accrued daily sanctions.
4. Not later than 12:01 p.m. on January 31, 2007, Partain and Maples shall each file a certificate with the Court setting forth the status of Partain's compliance with this order.
5. The Court will conduct a further hearing if the certificates reflect either (i) Partain has not complied with this order; or (ii) there is a dispute about

whether Partain complied with this order. The hearing will be at 1:30 p.m. on February 27, 2007. The hearing will be at the United State Courthouse in Brownsville, Texas. If Partain is not in compliance with this order at that time, the Court will consider what remedies will appropriately coerce compliance with this order. Such remedies may include additionally monetary sanctions, incarceration pending full compliance with this order, or other appropriate actions.

Signed at Houston, Texas, on January 23, 2007.

/s/ Marvin Isgur
MARVIN ISGUR
United States Bankruptcy Court

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

IN RE:	§	
JAMES HOWARD MAPLES; fdba	§	CASE NO:
GLOBAL TOURS & CHARTERS, *et al*	§	05-70128
Debtor(s)	§	
	§	CHAPTER 11
JAMES HOWARD MAPLES, *et al*	§	
Plaintiff(s)	§	
VS.	§	
	§	ADVERSARY NO.
JOHNNY PARTAIN, *et al*	§	05-7009
Defendant(s)	§	

OBJECTION TO MEMORANDUM OPINION ON PLAINTIFFS' MOTION FOR CONTEMPT AND ORDER FOR CONTEMPT

TO THE HONORABLE JUDGE OF THIS COURT

COMES NOW, JOHNNY PARTAIN, Defendant in the above styled and number caused and enters his *Objection To Memorandum Opinion On Plaintiffs' Motion For Contempt And Order For Contempt* pursuant to BLR 9033 and shows unto the Court as follows:

On October 27, 2006, James and Kathleen Maples (Maples) entered *Plaintiffs' Motion For Order To Show Cause And Motion For Contempt*. Said motion made unwarranted allegations of interference with assets under the control of Maples pursuant to Preliminary Order of May 19, 2005 and allegations of violation of Judgment entered April 27, 2006 to exercise control over a condominium. The Court found that Partain was in contempt for not turning over a condominium he and his wife owned pursuant to a temporary restraining order issued on March 29, 2005 on argument from Texas State Bank's Attorney whom approached the bench exparte, and without notice, and gave unknown documents to Judge Isgur. The Court's findings were not based on the original complaint for

contempt and in fact do not even represent an actual violation of any orders, but are based on fabrications or misrepresentations of whose origins are unclear concerning *Plaintiffs' Original Complaint For Injunctive Relief And Request For Temporary Restraining Order*. The Court has no basis or authority for making a ruling of contempt for the following reasons:

a. On or about March 28, 2005, Plaintiff sued Defendant through *Plaintiffs' Original Complaint For Injunctive Relief And Request For Temporary Restraining Order*; [sic] "Plaintiffs pray that the Court enter a temporary restraining order requiring JOHNNY PARTAIN and TERESA PARTAIN to turnover instanter to the U.S. Marshall's Service at the place of business of GLOBAL LIMO, INC. all properties seized by the JOHNNY PARTAIN and TERESA PARTAIN from the offices of GLOBAL LIMO, INC., including cash, checks, equipment, mail, and documents".1 Judge Isgur ruled Johnny Partain in civil contempt for not turning over a condominium to Maples pursuant to the *Temporary Turnover Order*. There is no mention of a condominium in Plaintiffs' Original Complaint nor in the *Temporary Turnover Order* and the condominium at issue didn't become an issue until *Plaintiffs' First Original Amended Complaint* entered October 4, 2006 nearly 7 months later. It is not reasonable for the Court to assume Partain should have known he was expected to turnover his condominium on the face of the complaint or order. Partain has never heard this argument or any innuendos thereof until Texas State Bank injected itself into the instant contempt hearing on January 22, 2007. Accordingly, Johnny Partain cannot be in contempt.

b. Defendant is entitled to have written notice that provides specific details of the alleged contempt, a stated time and place for a hearing on the charges, and a reasonable response time. BLR 9020. Plaintiff

and Judge Isgur violated all these requirements because:

i. Defendant was found guilty of contempt on a charge that wasn't alleged.

ii. Defendant was found guilty for violating an order that doesn't exist based on a complaint that doesn't exist.

iii. Defendant was ordered to pay significant amounts of money for an action he could not have avoided: The sanction is therefore punitive and criminal in nature and beyond the jurisdiction of the court. Additionally, Defendant has a right to an attorney and jury trial if he is charged with criminal contempt.

iv. Plaintiff did not provide adequate notice or any notice as ordered by Judge Isgur on November 30, 2006 for the instant contempt hearing. Defendant was unaware that an evidentiary hearing was scheduled.

v. Defendant did not have reasonable notice or response time to new allegations of contempt made at the instant contempt hearing in the last few minutes of the hearing. Accordingly, Johnny Partain did not receive due process under the law.

c. Court lacks jurisdiction to enforce orders that are void ab initio. A void judgment is one which, from its inception, was a complete nullity and without legal effect. Lubben v. Selective Service System, 453 F.2d 645, 649 (1st Cir. 1972). *Final Judgment* entered on or about April 27, 2006; *Memorandum Opinion On Summary Judgment* entered on or about January 26, 2006; *Order Granting Preliminary Injunction* entered on or about May 19, 2005; and *Temporary Restraining Order* entered on or about March 29, 2005 are orders which are void ab initio because:

1) There was no notice or service to the Defendants as required by FRCP 4 and only Johnny Partain made an appearance to complain of Maples' lack of standing to petition. Johnny Partain also complained that his interests were not being protected by the court in a temporary restraining order. However, Judge Isgur never obtained personal jurisdiction over all parties (Teresa Partain and Global Limo, Inc.) he ordered against. Before federal courts can exercise jurisdiction, procedural requirements of service of summons must be satisfied. Jose Maiz et al. v. Amir Virani, et al., 311 F.3d 334 (5th Circuit, 2002); FRCP Rule 4.

2) Judge Isgur lacked subject matter jurisdiction to order Johnny Partain to turnover Global Limo, Inc. assets to Maples or to order Global Limo, Inc. assets seized. Judge Isgur only has subject matter jurisdiction pursuant to 28 U.S.C. § 157(b)(1) over the bankruptcy estate and core bankruptcy matters. Plaintiffs' petitioned for the acquisition of shares, assets, and the corporation of Global Limo, Inc. to add to the bankruptcy estate, although only the shares of the corporation could have ever been ordered into the bankruptcy estate under the law provided certain criteria were met and that the shares could positively affect the estate. *Butner v. United States, 440 u.S. 48, 99; In re Murray, 147 B.R. 688, 690 (Banker. E.D. Va. 1992)(denying the debtor's motion to enforce an automatic stay because property owned by corporation of which debtor's husband was sole shareholder was not property of the bankruptcy estate because the debtor's equitable interests did not run to the property but only to the stock, and there was no*

present property interest). Global Limo, Inc. never filed for bankruptcy nor made any claims in bankruptcy. Teresa Partain and Global Limo, Inc. were, in law, non-parties to the instant adversary cause. Lack of subject matter jurisdiction makes an order void ad initio and an order void ab initio can be attacked at any time, in any court, either directly or collaterally, by any party. *Long v. Shorebank Development Corp., 182 F.3d 548 (C.A. 7 Ill. 1999) V.T.A., Inc. v. Airco, Inc., 597 F.2d 220, 224 (10th Cir. 1979); U.S. Supreme Court in Vallely v. Northern Fire & Marine Ins. Co., 254 U.S. 348, 41 S.Ct. 116 (1920); Freytag v. Commissioner, 501 U.S. 868 (1991)*.

3) *Final Judgment* entered on or about April 27, 2006 and *Memorandum Opinion On Summary Judgment* entered on or about January 26, 2006 are also void ab initio because Judge Isgur orders Johnny Partain's counterclaims against Maples and Texas State Bank dismissed: This has the effect of an adjudication on the merits. Judge Isgur does not have subject matter jurisdiction under 28 U.S.C. § 157, yet he nonetheless claims to use bankruptcy law to usurp Johnny Partain's civil rights. A judgment is void if the court that rendered judgment lacked jurisdiction or where there is plain usurpation of power constituting a violation of due process. *United States v. Boch Oldsmobile, Inc., 909 F.2d 657, 661 (1st Cir. 1990)*. Accordingly, Judgment is void ab initio and enforcing or executing a void judgment under the color of law may carries civil and criminal penalties. *18 U.S.C. §242; 42 U.S.C. §1983; FRCP 60*.

4) "Once jurisdiction is challenged, the court cannot proceed when it clearly appears that

the court lacks jurisdiction, the court has no authority to reach merits, but rather should dismiss the action." *Melo v. U.S. 505 F 2d 1026*. "The burden shifts to the court to prove jurisdiction." *Rosemond v. Lambert, 469 F 2d 416*.

Memorandum Opinion On Plaintiffs' Motion For Contempt is misleading in that it give a somewhat chronological review of the instant case without important details. Specifically, Johnny Partain has been litigating against James and Kathleen Maples for over 10 years and was eventually awarded a judgment for Fraud against James Maples despite Texas State Bank's efforts to prevent said judgment. Johnny Partain acquired shares and became President and Director of Global Limo, Inc. on or about January 27, 2005 before Maples filed for bankruptcy. James Maples with the aid of Texas State Bank removed approximately $47,000 dollars from the corporation to buy a ranch house approximately 2 weeks before filing bankruptcy and converted Global Limo, Inc. (Global) accounts into new account for James Maples after filing bankruptcy on February 16, 2005. Maples and Texas State Bank attempted to have Johnny Partain punished for interfering with Maples' operation of Global Limo, Inc. through Judge Schmidt on or about March 7, 2005 and was denied. In fact, Johnny Partain was found to be the probable owner of Global by Judge Schmidt wherefrom the automatic stay was lifted and Maples was allowed to challenge Partain in Texas State Court. Maples was denied relief approximately 3 times. Maples and Texas State Bank sought a temporary restraining order from Houston Bankruptcy Judge Isgur. Judge Isgur immediately accused Johnny Partain of having "dirty hands" and being in violation of the automatic stay. Judge Isgur took the tact that the corporation Global was an asset of James Maples and the District Court later argued that an injunction was proper based on the fact the corporation belonged to

Maples. Approximately, 9 months after the first TRO hearing, Judge Isgur determined that Partain was the actual owner of Global wherefrom Judge Isgur ordered an avoidance of the shares of Global to Partain and ordered Global and a condominium owned by Johnny Partain and Teresa Partain into Maples bankruptcy. It was a moot order since Global Limo, Inc. had already been raped of it's money and assets and was inoperable and because Global Limo, Inc. and Teresa Partain were non-parties.

It was later determined in bankruptcy cause 05-70128 on October 25, 2006 that Global Limo, Inc. nor it's asset were in bankruptcy and that Global Limo, Inc. had never filed for bankruptcy. The U.S. Trustee's office properly took the position that only the shares of Global were in Maples bankruptcy estate – there is still an outstanding appeal challenging the validity of the order to avoid the transfer of Partain's shares to Maples.

Johnny Partain objects to Judge Isgur's characterization of the Defendant as disingenuous and his actions as gamesmanship. Judge Isgur has been historically quick to negatively judge Johnny Partain and the record will show that Johnny Partain has been consistently honest and accurate with the Court. Johnny Partain has been unemployed by Judge Isgur, has had his corporation turned over to and ruined by a known fraud, has lost money, has lost time, has directly lost business in other business ventures, has been defrauded by Texas State Bank and by James and Kathleen Maples, has been wrongly accused and threatened by Judge Isgur, and has been frustrated to see people die after doing everything reasonable possible to prevent the injury or death by the orders of Judge Isgur. Yet Judge Isgur has been quick to immunize Maples and Texas State Bank from there own actions, including fraud, negligence, and conversion. There is no gamesmanship and Defendant is insulted that Judge Isgur believes this is a game. Further, Defendant made multiple objections to the contempt hearing and did not withdraw objections.

Defendant moves the Court to strike or dismiss it's *Order Holding Johnny Partain In Civil Contempt* and for relief from orders of the Court pursuant to FRCP 60(b)(4).

Respectfully Submitted,

/s/Johnny Partain
JOHNNY PARTAIN
7020 N 16th Street
McAllen, Texas 78504
956-240-1821

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

IN RE:	§	
JAMES HOWARD MAPLES; fdba	§	CASE NO:
GLOBAL TOURS & CHARTERS, *et al*	§	05-70128
Debtor(s)	§	
	§	CHAPTER 11
JAMES HOWARD MAPLES, *et al*	§	
Plaintiff(s)	§	
VS.	§	
	§	ADVERSARY NO.
JOHNNY PARTAIN, *et al*	§	05-7009
Defendant(s)	§	

SECOND MOTION FOR DISQUALIFICATION OF JUDGE ISGUR AND NOTICE CRIMINAL COMPLAINT AGAINST JUDGE ISGUR AND OTHER PARTIES HERETO

TO THE HONORABLE JUDGE OF THIS COURT

COMES NOW JOHNNY PARTAIN, Counter-Plaintiff in the above styled and numbered cause and enters his *Second Motion For Disqualification Of Judge Isgur And Notice Of Criminal Complaint Against Judge Isgur And Other Parties Hereto.* Counter-Plaintiff respectfully shows unto the Court as follows:

1. Counter-Plaintiff references arguments provided in *Response To Plaintiff's Notice Of Intention To File Motion For Order To Show Cause And Motion To Disqualify The Judge*(Doc #233) filed on or about April 19, 2006.
2. Counter-Plaintiff has made multiple complaints to the 5th Circuit Court of Appeals including complaints of abuses of discretion, fraud, racketeering, violations of civil rights, and the fabrication of evidence in the instant case against Bankruptcy Judge Marvin Isgur. Judge Isgur is required to be informed.

3. Counter-Plaintiff has also filed certified criminal complaints against Judge Isgur and other parties to this instant case with the Department of Justice and the Federal Bureau of Investigation on the basis of fraud, racketeering, and severe violations of civil rights pursuant to 18 U.S.C. 242 resulting in the loss of rights, property, life, and the criminal conviction of Global Limo, Inc., a non-party to this case, while under orders of seizure and while operated through an agent of this Court. Pursuant to 18 USC 242 [sic]:

> *Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, ... shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.*

4. Additionally, Counter-Plaintiff has been forced to sue Judge Isgur and his orders constructed under the instant cause to chronicle that they are void ab initio (not voidable) and are not legally enforceable.

5. Accordingly, Judge Isgur (and other parties or associates) may face severe criminal penalties, including fines, imprisonment, and death sentences, and may face civil penalties as well. It is reasonable to assume that Judge Isgur impartiality in the instant proceedings is questionable and has been questioned. Judge Isgur shall disqualify himself. 28 U.S.C. §455 (a).

Respectfully Submitted,

/s/Johnny Partain
JOHNNY PARTAIN
7020 N 16th Street
McAllen, Texas 78504
956-240-1821

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

IN RE:	§	
JAMES HOWARD MAPLES; fdba	§	CASE NO:
GLOBAL TOURS & CHARTERS, *et al*	§	05-70128
Debtor(s)	§	
	§	CHAPTER 11
JAMES HOWARD MAPLES, *et al*	§	
Plaintiff(s)	§	
VS.	§	
	§	ADVERSARY NO.
JOHNNY PARTAIN, *et al*	§	05-7009
Defendant(s)	§	

PLAINTIFFS' MOTION FOR ORDER TO SHOW CAUSE AND MOTION FOR CONTEMPT

TO THE HONORABLE U.S. BANKRUPTCY JUDGE:

NOW COMES JAMES H. MAPLES and VIRGINIA KATHLEEN MAPLES, Plaintiffs herein, file this their Motion For Order to Show Cause And Motion For Contempt, and in support thereof, would respectfully show:

1. Plaintiffs are Debtors who filed a voluntary chapter 11 petition on February 16, 2005 in the case styled In re James H. Maples and Virginia Kathleen Maples Bankruptcy Case No. 05-70128 in the U.S. Bankruptcy Court For The Southern District of Texas, McAllen Division. Respondents are JOHNNY PARTAIN and TERESA PARTAIN, who on information and belief are married individuals who can be served at 7020 N. 16th, McAllen, Texas 78504.

2. On March 28, 2005, Plaintiffs filed the instant adversary proceeding styled James H. Maples and Virginia Kathleen Maples v. Johnny Partain and Teresa Partain, Adversary No. 05-07009 in the U.S. Bankruptcy Court For The Southern District of Texas, McAllen Division.

3. On May 19, 2005, the Court entered a Preliminary Injunction in the above-styled case.

4. Under paragraph 7 i. of the Preliminary Injunction, the Court ORDERED the following: **It is ORDERED that the Defendants shall refrain from exercising control over any assets under the control of the Maples.**

5. On February 21, 2006, Defendants caused to be filed with the Texas Secretary of State a Certificate of Amendment changing the name of Global Limo, Inc. to Atlas Transportation, Inc.

6. Defendants actions of February 32, 2006 were in violation of the preliminary injunction entered on 5-19-05 and as clarified and extended on 10-17-05.

7. At the time of the filing of the instant adversary, Defendants claimed that they were the owners of the stock of Global Limo, Inc.

8. The Court in its Preliminary Injunction entered 5-19-05 and its Memorandum Opinion on Summary Judgment entered on 1-26-06 concluded that Plaintiffs were the owners of the stock of Global Limo, Inc.

9. Defendants are taking three different and conflicting positions as to ownership of the Global Limo, Inc. stock, to-wit:

A. At the outset of the instant adversary, Defendants claimed that Johnny Partain was the owner of the Global Limo, Inc. stock by virtue of the state court turnover order of 1-27-05.

B. On January 31, 2006, Defendants caused to be filed a Notice of Bankruptcy in the instant adversary stating that a non-voluntary bankruptcy petition had been filed by Johnny Partain against Trust97, "holder of all interest in shares to Global limo, Inc. and Global Sports and Entertainment, Inc." The notice indicated that the case had been assigned bankruptcy case number 06-70035. In court proceedings, Defendant Johnny Partain stated that he had transferred the interest in Global Limo, Inc. stock to Trust97 prior to the filing of the bankruptcy petition by Plaintiffs on February 16, 2005.

Interestingly enough, Defendant Johnny Partain attempted to file a voluntary petition on behalf of Trust97 in December 2005, i.e., he actually signed the bankruptcy petition himself. The December 2005 voluntary petition was ordered striken by Court order dated December 29, 2005. The January 2006 Trust97 involuntary petition was dismissed after a hearing conducted on or about March 29, 2006.

C. Thereafter, on February 21, 2006, Defendant took the position that Johnny Partain was again the owner of the shares of Global Limo, Inc. when the Defendants caused to be filed the Certificate of Amendment changing the name of Global Limo, Inc. to Atlas Transportation, Inc.

10. On April 18, 2006, Plaintiffs gave notice of their intention to file a motion for order to show cause for the above-referenced matters unless such matters were cured within 21 days from the date of this motion. Defendants have failed to cure such matters and continue to act in flagrant disregard of the Court's rulings and orders. Since April 18, 2006, Defendants have caused to be filed pleadings in state court litigation claiming once again an interest in Global Limo, inc. in an effort to disrupt settlement efforts.

11. This Honorable Court has the authority to sanction the Defendants under Bankruptcy Rule 9011, as well as under the Court's inherent authority to enforce its orders.

12. Plaintiffs have been severely damaged by Defendants' actions. Plaintiffs pray that the Court enter as a sanction against the Defendants an order that any and all claims and judgments that they have or may have against the Plaintiffs are forfeited.

13. Wherefore, Plaintiffs pray that the Court enter an order requiring Defendants to appear and show cause why they should not be sanctioned for the above-identified acts,

and for such other and further relief to which Plaintiffs may be justly entitled.

14. On April 27, 2006, this Court entered a judgment which recited:

All transfers made to, by or at the direction of the Partain's or the Hidalgo County Court at Law #1 in Cause No. CL-29,530-A are avoided. Without limiting the generality of the foregoing, title to the following assets is hereby vested in the Maples Bankruptcy Estate, subject to all security agreements (as that term is defined in § 101 of the Bankruptcy Code) that existed as of the date of the petition:

a) 100% of all interests in Global Limo and its assets, whether such interests are in the form of stock or other forms of ownership.

b) The East 18.41 feet of the West 60.82 feet of Lot 37, El Cazador Subdivision, Unit No. 2, an addition to the City of McAllen, Hidalgo County, Texas, according to map thereof recorded in volume 19, page 58 of the Map Records of Hidalgo County.

***

The Partains, and all persons working in concert with them, are permanently enjoined from asserting any rights or control over any assets of the Maples or the Maples Bankruptcy Estate (includig without limitation any assets that are the subject of paragraph 2 of this judgment), except as follows:

a) The Partains may exercise any rights granted to them by an order issued by the United States Bankruptcy Court For the Southern District of Texas or the United States District Court For the Southern District of Texas if such order is issued after the date of this judgment.

b) The Partains may exercise collection rights on the judgment described in paragraph 1 of this judgment, but only to the extent that such exercise is (i) authorized by

§362(c)(1) of the Bankruptcy Code; and (ii) against property that has not been exempted under §522 of the Bankruptcy Code.

15. The Judgment of April 27, 2006 has been filed at Document Number 1624941 of the Official Records of Hidalgo County, Texas.

16. Defendant JOHNNY PARTAIN has violated the above-quoted terms of the Judgment of April 27, 2006 as follows:

Defendant JOHNNY PARTAIN continues to attempt to exercise control over the condominium with a legal description of: The East 18.41 feet of the West 60.82 feet of Lot 37, El Cazador Subdivision, Unit No. 2, an addition to the City of McAllen, Hidalgo County, Texas, according to map thereof recorded in volume 19, page 58 of the Map Records of Hidalgo County. Defendant JOHNNY PARTAIN has called the police on Plaintiff James H. Maples when Maples sought to exercise control over the condominium; Defendant JOHNNY PARTAIN is still seeking to receive rents from said property; and Defendants are still asserting ownership of said property.

17. Plaintiffs pray that Defendant be held in contempt for violation of the permanent injunction contained in the Judgment signed April 27, 2006.

18. Plaintiffs pray that Defendants be stripped of their claim against Plaintiffs for the continued pattern of abuse and disregard of the Court's orders, and that Defendants be sanctioned.

Respectfully submitted,

/s/ James H. Maples
JAMES H. MAPLES

/s/ V. Kathleen Maples
V. KATHLEEN MAPLES

605 Wisteria
McAllen TX 78501
956.451.4090

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

IN RE:	§	
JAMES HOWARD MAPLES; fdba	§	CASE NO:
GLOBAL TOURS & CHARTERS, *et al*	§	05-70128
Debtor(s)	§	
	§	CHAPTER 11
JAMES HOWARD MAPLES, *et al*	§	
Plaintiff(s)	§	
VS.	§	
	§	ADVERSARY NO.
JOHNNY PARTAIN, *et al*	§	05-7009
Defendant(s)	§	

ORDER TERMINATING CIVIL CONTEMPT ORDER

On February 27, 2007, this Court found Mr. Partain in civil contempt and ordered sanctions to coerce his compliance with this Court's orders. On January 23, 2008, Judge Schmidt ruled that the Maples were entitled to offset the amount owed under their confirmed plan *to* Mr. Partain with the amount due *by* Mr. Partain. Based on Judge Schmidt's ruling, there is no further need for coercion. The monetary awards have been satisfied by offset.

This Court does not have criminal contempt authority and must utilize its civil contempt authority for the limited purposes allowed by law. No further civil contempt purpose is served by the Court's February 27, 2007 order.

Accordingly, this Court's civil contempt order is terminated.

The Court is aware of Mr. Partain's habeas petition pending before Judge Crane. If Judge Crane should determine that this Court's February 27, 2007 order was correctly issued, he could determine that Mr. Partain must

be confined based on that order. Accordingly, the Court does not believes that this Court's February 27, 2007 order is moot. The Court's Case Manager shall deliver a copy of this order to United States District Judge Crane with reference to civil action 7:07-cv-00092.

SIGNED January 24, 2008.

/s/ Marvin Isgur
MARVIN ISGUR
United States Bankruptcy Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

JOHNNY PARTAIN,	§	
Petitioner,	§	
VS.	§	CIVIL ACTION NO. M-07-92
	§	
BRAVO, *et al*,	§	
Respondent.	§	

ORDER DISMISSING PETITION FOR WRIT OF HABEAS CORPUS AS MOOT

I. Factual and Procedural Background

On April 27, 2007, Petitioner Johnny Partain filed his Original Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. (Doc. 1). According to Petitioner, "he is illegally confined by [Respondent] Warden Bravo of the East Hidalgo County Detention Center through order of Bankruptcy Judge Marvin Isgur." *Id.* The parties do not dispute that on January 23, 2007, the U.S. Bankruptcy Court, Southern District of Texas, McAllen Division held Petitioner in contempt for failing to release control of a condominium in violation of previous orders of the bankruptcy court in the adversary proceeding before it. (Doc. 1, Order Holding Johnny Partain in Civil Contempt; Memorandum Opinion on Plaintiffs' Motion for Contempt; Doc. 15, Exs. A, B). The record indicates that this adversary proceeding commenced on March 28, 2005 when James and Virginia Maples, debtors who filed a voluntary chapter 11 bankruptcy petition on February 16, 2005, filed their "Original Complaint for Injunctive Relief and Request for Temporary Restraining Order" seeking relief against Petitioner and his wife, Teresa Partain. (Doc. 1, Plaintiffs' Original Complaint for Injunctive Relief and Request for Temporary Restraining Order). The complaint alleged that the Partains had filed a pre-petition lawsuit against the Maples in state court and had obtained an order for turnover of various assets from the Maples to the Partains, including stock in Global Limo, Inc. *Id.* Prior to the service

of that order and prior to any turnover of stock, the Maples filed the chapter 11 petition. *Id.* The Partains then seized certain assets from the business premises of Global Limo, Inc. in an effort to collect on the state court judgment. *Id.* The Maples claimed that as of the date of the filing of the chapter 11 petition, the charter of Global Limo, Inc. had been forfeited and therefore the Maples, the individual shareholders of the corporation, were the beneficial owners of all assets formerly belonging to Global Limo, Inc. *Id.* The Maples alleged that the Partains' seizure of the Maples' assets therefore violated the automatic stay imposed by 11 U.S.C. § 362. *Id.* The Maples requested a temporary restraining order, preliminary injunction, and permanent injunction prohibiting the Partains from continuing to take actions to collect on the state court judgment. *Id.*

After a hearing, the bankruptcy court granted the Maples' request for a temporary restraining order ("TRO") on March 29, 2005. (Doc. 1, TRO; TRO Hearing). The court concluded that the Maples had established a reasonable probability of prevailing on the merits of their claim that the Partains violated the automatic stay by exercising their rights under the state court turnover order to take possession of property in the Maples' possession. (Doc. 1, TRO). The TRO, among other things, required the Partains to return all of the seized assets to the Maples for their control. *Id.* Although the TRO made no specific mention of a condominium, the transcript of the TRO hearing provides as follows:

> **[Counsel for the Maples]:** Your Honor, there is an issue of the condominium that...was titled in the name of Global Limo, Inc. that [Petitioner], on behalf of 3 / 11 Global Limo, Inc. had transferred to himself.... And I guess I didn't quite—I don't think your orders thus far said anything about that particular piece of property.
>
> **The Court:** I didn't deal with the condo, and I should have. With respect to the condo, I want there to be a recorded instrument placed in the title records that says there can be no further transfers or encumbrances of the

> condominium.... So let's just—We're going to cloud the title with our own lis pendens.

(Doc. 1, TRO Hearing at p. 29).

The court further informed the parties that the TRO would include reference to a lis pendens on the condominium and another property. *Id.* at p. 32. Therefore, the TRO in fact referenced the condominium by ordering the parties to "record instruments in the real property records preventing the sale, transfer, and/or encumbrance of the two parcels of real property at issue in this proceeding." (Doc. 1; Doc. 1, TRO). After a hearing, the court extended the terms of the TRO through the issuance of a preliminary injunction ("PI") ordering the Partains to "refrain from exercising control over any assets under the control of the Maples." (Doc. 1, Order Granting PI). The PI, issued on May 19, 2005, made no specific mention of the condominium. *See id.* However, it noted that at the time of the filing of the chapter 11 petition, "the shares of Global Limo, Inc. were in [the Maples'] possession, and Mr. Maples was the beneficial owner of the assets of Global Limo, Inc. pursuant to Texas law." *Id.* In addition to reasserting that the Maples had a reasonable probability of succeeding on their claim that the Partains had violated the automatic stay, the court found that the state court turnover order "may represent an avoidable preference pursuant to [11 U.S.C.] § 547." *Id.*

Petitioner admits that subsequent to the issuance of the TRO and PI, the Maples filed an amended complaint that referenced the condominium. (Doc. 1; *see also* 4 / 11 Adversary Case No. 05-7009 (Doc. 135)).[1] In addition, the

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[1] The amended complaint, of which the Court takes judicial notice, alleges that sometime shortly on or after January 27, 2005, Petitioner caused a deed to be filed transferring title of a condominium in McAllen, Texas from Global Limo, Inc. to Petitioner for the purchase price of ten dollars. (Adversary Case No. 05-7009 (Doc. 135)). The Maples claimed that these actions violated 11 U.S.C. § 547 and

record reveals that the bankruptcy court issued a final judgment in the adversary proceeding on April 27, 2006, after a trial on the merits. (Doc. 1, Plaintiffs' Motion for Order to Show Cause and Motion for Contempt; Memorandum Opinion; Doc. 15, Ex. B; Doc. 23, Judgment). The judgment avoided all pre-petition transfers received by Petitioner, vested title of the condominium in the Maples bankruptcy estate, and permanently enjoined the Partains from asserting any rights or control over any of the assets of the Maples or the Maples bankruptcy estate. *Id.* In requesting that Petitioner be held in civil contempt, the Maples alleged that Petitioner had violated the April 27, 2006 judgment and the permanent injunction included therein by continuing to exercise control over the condominium. (Doc. 1, Motion for Contempt). The Maples' motion also argued that Petitioner had violated the terms of the PI. *Id.* The court granted the Maples' motion for contempt, finding that Petitioner's continued exercise of control over the condominium violated its prior orders. (Doc. 1, Civil Contempt Order; Memorandum Opinion). The court's civil contempt order and accompanying memorandum opinion indicated that Petitioner could comply with the court's order by paying $4,450 (the amount of rent Petitioner had collected from the tenant in the condominium since the date of the court's preliminary injunction) to the "James Maples Bankruptcy Estate" by January 26, 2007. *Id.* The order also required Petitioner to pay an additional $250.00 per day for each day of noncompliance with the order. *Id.* In addition, the order stated the bankruptcy court's intention to hold a hearing on February 27, 2007 in the event Petitioner had not complied with the court's order by that time. *Id.* The order further stated as follows:

> If [Petitioner] is not in compliance with this order at that time, the Court will consider what remedies will

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requested that the bankruptcy court enter an order avoiding the transfer of the condominium and restoring ownership of this asset to the Maples. *Id.*

> appropriately coerce compliance with this order. Such remedies may include additional monetary sanctions, incarceration pending full compliance with this order, or other appropriate actions. *Id.*

Due to Petitioner's non-compliance with the terms of the civil contempt order, the bankruptcy court held a hearing on February 27, 2007 and ordered Petitioner's incarceration until he paid $4,450, plus the daily sanctions that had accrued, to the James Maples Bankruptcy Estate. (Doc. 1, Order Finding Contempt and Requiring Incarceration; Doc. 15; Doc. 24, Ex. A). The court further ordered that "[t]he accrual of the $250 daily sanction for nonpayment terminates on entry of this order, since Partain's incarceration is intended to coerce compliance." *Id.* The U.S. Marshals Service delivered Petitioner to the custody of the East Hidalgo Detention Center on February 27, 2007 pursuant to the court's order. (Doc. 1; Doc. 13, Ex. A; Doc. 15; Doc. 15, Exs. A, B; Doc. 24, Ex. A). On May 10, 2007, this Court ordered Petitioner's temporary release from custody pending final ruling on the merits of his habeas petition. (Doc. 2).[2]

Petitioner's habeas corpus petition alleges that his incarceration for civil contempt is illegal for various reasons. (Doc. 1). Both Petitioner and Respondent have filed motions seeking summary judgment on Petitioner's claims. (Docs. 9, 23, 25, 28). However, on January 24, 2008, the bankruptcy court issued an "Order Terminating Civil Contempt Order." (Adversary Case No. 05-7009 (Doc. 284)). In that order, the court stated that the bankruptcy court presiding over the underlying chapter 11 proceeding had ruled on January 23, 2008 that the Maples were entitled to offset the amount owed under their confirmed plan *to* Petitioner with the amount due *by* Petitioner. *Id.* The bankruptcy court then stated:

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[2] Respondent has provided evidence that Petitioner was released from custody on this date. (Doc. 13, Ex. B; Doc. 24, Ex. A).

> Based on Judge Schmidt's ruling, there is no further need for coercion. The monetary awards have been satisfied by offset. This Court does not have criminal contempt authority and must utilize its civil contempt authority for the limited purpose allowed by law. No further civil contempt purpose is served by the Court's February 27, 2007 order. *Id.*

The bankruptcy court indicated, however, that it did not believe that its order rendered moot the habeas petition pending before this Court. However, this Court must conclude differently, and therefore dismiss the present case.

II. Analysis

Pursuant to 28 U.S.C. § 2241, a district court has the authority to consider a petition for writ of habeas corpus where the petitioner is held "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(a), (c)(3); *Rasul v. Bush*, 542 U.S. 466, 473 (2004). The court determines whether a habeas petitioner is "in custody," and thus whether he has satisfied this jurisdictional requirement, at the moment the petition is filed. *Zalawadia v. Ashcroft*, 371 F.3d 292, 297 (5th Cir. 2004)(citing *Spencer v. Kemna*, 523 U.S. 1, 7 (1998); *Carafas v. LaVallee*, 391 U.S. 234, 237-38 (1968)). Here, the U.S. Marshals Service delivered Petitioner to the custody of the East Hidalgo Detention Center on February 27, 2007 and Petitioner remained incarcerated at the time he filed his habeas petition on April 27, 2007. (Doc. 1; Doc. 13, Ex. A; Doc. 15; Doc. 15, Exs. A, B; Doc. 24, Ex. A). Therefore, Petitioner was in federal custody at that time. Nonetheless, the Court recognizes that a petitioner who has been released from custody subsequent to the filing of his habeas petition must demonstrate that his release has not rendered the petition moot, *i.e.*, that he continues to present a "case or controversy" under Article III, § 2 of the U.S. Constitution. *Zalawadia*, 371 F.3d at 297 (citing *Spencer*, 523 U.S. at 7). An Article III case or controversy exists where the petitioner can demonstrate "'some concrete

and continuing injury other than the now-ended incarceration,'-a 'collateral consequence'" of the order imposing confinement. *Id.* (quoting *Spencer*, 523 U.S. at 7). In the absence of an Article III case or controversy, a court must dismiss for lack of subject matter jurisdiction. *See Dailey v. Vought Aircraft Co.*, 141 F.3d 224, 227 (5th Cir. 1998). Furthermore, "a federal court is obligated to raise the issue [of mootness], *sua sponte*, if the facts suggest mootness notwithstanding the silence of the parties with respect to the issue." *Id.* (citing *N.C. v. Rice*, 404 U.S. 244, 245 (1971); 15 JAMES W. MOORE ET AL., MOORE'S FEDERAL PRACTICE § 101.92, 101-168 (3d ed. 1997)).

As a general rule, the complete discharge or purgation of a purely civil contempt order moots a habeas challenge to that order. *See Port v. Heard*, 764 F.2d 423, 426-27 (5th Cir. 1985). In *Port*, a Texas state district court found the petitioners, Bernard and Odette Port, in contempt for refusing to testify before a grand jury. *Id.* at 425. The court imposed a $500 fine on each petitioner and ordered the respondent to take the Ports into custody until they purged themselves of the contempt. *Id.* Subsequent to the filing of the petitioners' federal habeas challenge to their confinement, Bernard Port appeared before the grand jury. *Id.* The state court found that this appearance purged Mr. Port of the contempt, which enabled his release from confinement. *Id.* After the grand jury's term expired and it disbanded, the court ordered Odette Port's release from confinement. *Id.* Payment of the fines was superseded by personal bond pending appeal. *Id.*

Noting that "[s]ubsequent release of the petitioner does not oust the court of statutory jurisdiction," the Fifth Circuit found that the Ports had met the "in custody" jurisdictional requirement. *Id.* at 426 (citing *Carafas*, 391 U.S. at 238). The court then considered whether the purgation of the contempt had mooted the petitioners' habeas appeal. *Id.* at 426. The court noted the general rule that the complete discharge of a purely remedial civil contempt order renders moot any direct appeal of that

order by the contemnor. *Id.* at 426 (citing cases). The court further noted that "there are numerous cases holding that a criminal contempt judgment is not mooted by the contemnor's release from confinement." *Id.* at 427 (citing cases). The court determined that although the petitioners' confinement constituted a civil sanction intended to compel testimony, the fines imposed on them could only be classified as punitive or criminal in nature, in that they were payable regardless of the petitioners' compliance with the court's demand. *Id.* at 426. Therefore, the fines "converted the contempt judgments into criminal judgments, at least for our purposes." *Id.* at p. 427. Faced with what it considered a criminal contempt sanction, the court proceeded to conclude that the outstanding fines constituted a direct and continuing consequence of the contempt judgments and thus preserved the habeas petition from mootness. *Id.* at 427-28.

Here, although the bankruptcy court's contempt orders imposed both monetary sanctions and confinement, this Court must conclude that both sanctions are civil in nature. The Fifth Circuit has held that bankruptcy courts have the statutory authority to conduct civil contempt proceedings but lack the power to hold persons in criminal 9 / 11 contempt. *Matter of Terrebone Fuel & Lube, Inc.*, 108 F.3d 609, 613 (5th Cir. 1997). The bankruptcy court noted as such in its memorandum opinion, in which it scrutinized the relief requested by the Maples to determine whether such relief was appropriately civil in nature. (Doc. 1, Memorandum Opinion; Doc. 15, Ex. B). As the bankruptcy court recognized, the Fifth Circuit has explained as follows:

> [T]he ultimate test for determining the civil or criminal character of a contempt order is the apparent purpose of the trial court in issuing the contempt judgment, a punitive purpose or one designed to vindicate the authority of the court establishing the criminal nature of the order, while a coercive or remedial purpose characterizes civil contempt.

Thyssen, Inc. v. S/S Chuen On, 693 F.2d 1171, 1173-74 (5th Cir. 1982).

Where both purposes are present, the order is to be considered criminal. *Thyssen*, 693 F.2d at 1174 n.4. The Supreme Court has clarified that a contempt order "is considered civil and remedial if it either coerces the defendant into compliance with the court's order or compensates the complainant for losses sustained." *Int'l Union, United Mine Workers of Am.*, 512 U.S. 821, 829 (1994)(quotations omitted).[3] In other words, a civil contempt sanction "is designed 'to coerce the defendant to do the thing required by the [court's] order for the benefit of the complainant,' rather than 'to vindicate the authority of the law.'" *Id.* at 442 (Ginsburg, J., concurring)(quoting *Gompers*, 221 U.S. at 442); *see also Karaha Bodas Co., L.L.C. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 335 F.3d 357, 375 (5th Cir. 2003)(where obvious purpose of contempt order is to effect compliance with court's substantive orders, order civil in character); *In re Hunt*, 754 F.2d 1290, 1293 (5th Cir. 1985)(contempt order remedial and civil in nature where it is designed to coerce party into complying with permanent injunction). The Fifth Circuit's decision in *Hunt*, *supra*, presents a scenario akin to the present case. In that case, the district court issued a contempt order granting the appellant a five

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[3] In *United Mine Workers*, the Court explained that "[t]he paradigmatic coercive, civil contempt sanction...involves confining a contemnor indefinitely until he complies with an affirmative command such as an order 'to pay alimony, or to surrender property ordered to be turned over to a receiver, or to make a conveyance.'" *United Mine Workers*, 512 U.S. at 828 (quoting *Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418, 442 (1911)). "In these circumstances, the contemnor is able to purge the contempt and obtain his release by committing an affirmative act, and thus 'carries the keys of his prison in his own pocket.'" *Id.* On the other hand, "a fixed sentence of imprisonment is punitive and criminal if it is imposed retrospectively for a 'completed act of disobedience,' such that the contemnor cannot avoid or abbreviate the confinement through later compliance." *Id.* at 828-29 (quoting *Gompers*, 221 U.S. at 443)(internal citation omitted).

day grace period before imposing a fine for his failure to comply with the court's injunction. *Hunt*, 754 F.2d at 1292-93. The Fifth Circuit characterized this fine as civil in nature, in that "the court's purpose in imposing the fine was not to punish Hunt for past misconduct, but rather to coerce him into complying with the court's injunction." *Id.* at 1293. In fact, the appellant complied with the injunction within the grace period and thus avoided the imposition of the fine. *Id.* at 1292. Given that the appellant had purged himself of a purely civil contempt sanction, the Fifth Circuit found that the issue of the propriety of the contempt judgment was moot. *Id.* at 1293.

Here, the bankruptcy court's initial contempt order gave Petitioner a short grace period within which to pay $4,450, the value of the rent collected by Petitioner from the tenant of the condominium, as compensation to the Maples Bankruptcy Estate for Petitioner's continued failure to relinquish control over this property. This amount did not constitute a punitive fine; rather, the court intended for this amount to coerce compliance with its substantive orders and provide a remedy for failure to comply.

The initial contempt order also provided that upon the expiration of the grace period, Petitioner would be charged daily sanctions if he continued to refuse to compensate the estate as ordered. Petitioner could avoid these monetary sanctions by paying the amount due. When, a month after the issuance of the court's order, Petitioner had still failed to comply with its terms, the court ordered Petitioner's incarceration pending payment of $4,450 plus the daily sanctions that had accrued to that date. Again, the court ordered incarceration to coerce compliance with its orders and thus effectuate a remedy for non-compliance. Pursuant to the court's incarceration order, Petitioner could purge himself of the contempt and obtain his release by paying the amount due.

In sum, the court ordered both monetary sanctions, and later the imposition of confinement, only upon Petitioner's refusal to compensate the Maples Bankruptcy Estate for

his continued violation of the court's substantive orders. The court gave Petitioner the ability to purge himself of both by complying with the court's orders. Given these facts, this Court concludes that the contempt orders of the bankruptcy court were wholly coercive and remedial, and thus civil in nature. As the amount owed by Petitioner pursuant to these orders has been purged through offset, and thus incarceration is no longer warranted to coerce payment, Petitioner's habeas petition challenging the bankruptcy court's contempt orders is moot.

III. Conclusion

For the foregoing reasons, the Court hereby **ORDERS** that Petitioner Johnny Partain's Original Petition for Writ of Habeas Corpus is hereby **DISMISSED** as moot.

SO ORDERED this 17th day of April, 2008, at McAllen, Texas.

/s/RandyCrane
Randy Crane
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

JOHNNY PARTAIN,	§	
Petitioner,	§	
VS.	§	CIVIL ACTION NO. M-07-92
	§	
BRAVO, *et al*,	§	
Respondent.	§	

JOHNNY PARTAIN'S MOTION TO AMEND FINDINGS OF FACTS AND CONCLUSIONS OF LAW AND FOR RECONSIDERATION

COMES NOW JOHNNY PARTAIN, Plaintiff in the above styled and numbered cause and files his *Johnny Partain's Motion To Amend Findings Of Facts And Conclusions Of Law And For Reconsideration* and in support thereof respectfully shows unto the Court as follows:

EXISTING CONTROVERSY

Plaintiff's instant petition for writ of habeas corpus is not moot. Pursuant to the illegal incarceration of Johnny Partain and events thereof and under the scope of this petition for writ of habeas corpus, there have been continuing injuries, claims, criminal complaints, and litigations; particularly with respect to judicial misconduct involving fraud, racketeering, and violations of constitutional rights. This Court is aware that Mr. Partain has served tort claims on U.S. District Clerk Michael Milby for U.S. Courts of the Southern District of Texas, United States Department of Justice, and United States Marshals Service. Mr. Milby's office erroneously transformed the tort claim into a complaint, case no. 7:08-cv-00069, which was placed under the jurisdiction of this instant court. Through judicial assistant, Stephanie Karam, Mr. Partain communicated with Judge Crane on February 25, 2008 that case 7:08-cv-00069 was not a complaint but was a tort claim

ripening to a complaint[1] and that Mr. Partain was not yet a party, wherefrom Judge Crane immediately set the case for a hearing.

There is also related litigation in Johnny Partain et al. v. Marvin Isgur, case no. M-07-016 regarding Marvin Isgur's misconduct in adversary case no. 05-07009, particularly to the abusive events in case no. 05-07009 leading to Mr. Partain's incarceration.[2] Plaintiff seeks declaratory relief and injunction against Mr. Isgur. Mr. Isgur has been alleged to engage in violation of constitutional rights, 18 U.S.C. §242, fraud, and racketeering affecting the rights and property of Mr. Partain, although Mr. Partain does not seek a finding or adjudication on such crimes and torts in that case.

This Court improperly relies on *Order Terminating Civil Contempt* sent directly to this cause's Judge Crane through order of Marvin Isgur because the order is inaccurate and misleading. This Court has allegedly taken judicial notice of the records in bankruptcy case 05-70128 and should be aware that, while there was a ruling, there was no actual order entered pursuant to FRCP 58 to offset $8200 from Mr. Partain. In fact, James Maples refuses to abide by any findings or orders of the Court concerning distributions to Mr. Partain and Bankruptcy Court continues to entertain litigation pursuant to any offsets, recoupments, or any

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[1] With respect to judicial canons, a properly timed tort claim offers opportunity to settle damages without necessarily embarrassing parties in interest.

[2] Had Mr. Partain received due consideration or hearing in to his emergency petition and motion in case no. M-07-016, Mr. Partain would have probably never been incarcerated in the first place. The case was dismissed allegedly on the defense of judicial immunity, but Mr. Partain was able to enter and show that Mr. Isgur was engaged in fraud and racketeering with Texas State Bank through his motion for reconsideration and through 32 pieces of evidence entered prior to Court's order. Of course, the United States does not employ persons to engage in fraud and racketeering so the complaint is still pending. The motion for reconsideration has been unanswered for over 6 months and Mr. Partain has requested a status hearing.

distributions to Mr. Partain through the confirmed bankruptcy plan. However, applying offsets or recoupments responsive to Mr. Isgur's orders is not a legally recognized option[3] for the bankruptcy Court which is probably the reason there hasn't been an order entered to exercise the legal theory and why the controversy to offset continues.

Mr. Isgur illegally seized Global Limo, Inc. and applied bankruptcy rules to it to transfer, not retransfer, a condominium belonging to Mr. Partain to Maples et al. On arguments from Texas State Bank in bankruptcy case no. 05-70128, that the condominium placed into Maples' bankruptcy didn't have anything to do with Maples bankruptcy, Judge Schmidt ordered that Texas State Bank may execute on the condominium rather than return it to it's owners Johnny Partain and Teresa Partain. *See Petitioner's First Supplemental Motion For Summary Judgment.* It is clear that Mr. Isgur lacked jurisdiction to seize the condominium, to seize rent from the condominium, or to incarcerate Mr. Partain on basis of the condominium, and Mr. and Mrs. Partain continue to be deprived of their property and any satisfaction therefrom.

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[3] A setoff is the cancellation of cross demands between two parties. This term applies to judicially supervised setoffs and the automatic and contractual extinction of cross demands. Section 553 of the Bankruptcy Code limits prepetition setoffs. Section 553 provides that the right of setoff is not affected by the filing of a bankruptcy case so long as mutual debts existed between the parties before commencement of the case. Therefore, a creditor's prepetition claim generally can be offset against that creditor's prepetition debt to a bankruptcy debtor. However, prepetition claims generally cannot be offset against postpetition debts. "Recoupment is a defense that goes to the foundation of plaintiff's claim by deducting from plaintiff's recovery all just allowances or demands accruing to the defendant with respect to the same contract or transaction." Distribution Servs. Ltd. v. Eddie Parker Interests Inc., 897 F.2d 811, 812 (5th Cir. 1990); United States v. Gerth, 991 F.2d 1428, 1431 (8th Cir. 1993). Matter of Coxson, 43 F.3d 189, 193-94 (5th Cir. 1995) (where creditor's and debtor's obligations arise out of the same contract recoupment is appropriate). Setoff and recoupment theories don't apply.

Consequently, the issues raised in this case are not moot and dismissal of Plaintiff's petition for writ of habeas corpus do not settle the controversies or issues raised which continue to harm Plaintiff.

OBJECTIONS

This Court failed to provide the relief requested or to address the issues raised in petition and in three relatively unopposed motions for summary judgment through it's dismissal of the case under *Order Dismissing Petition For Writ Of Habeas Corpus As Moot* [30] (Order), including requests that this Court resolve issues concerning jurisdiction, seizure, protection of property seized, and avoidance under bankruptcy at it applies to Johnny Partain, Teresa Partain, and Global Limo, Inc. and that specific subsisting orders or action be found void, unconstitutional or plainly fraudulent wherefrom Johnny Partain was illegally incarcerated and his property seized.

1) Plaintiff objects that this Court failed to respond to the Plaintiff's very basic requests to review Bankruptcy Court's source of jurisdiction[4], to address the unconstitutional seizure of property, and to address the lack of substantive due process afforded Mr. Partain.
2) Plaintiff objects that no meaningful hearing was held to determine the facts or arguments relevant to the case; although, this Court did state on record on or about November 30, 2007 that after 99% of it's analysis was complete it concluded that Marvin Isgur did not have the right to seize Global Limo, Inc. or to seize a house belonging to Johnny Partain and Teresa Partain, and that the Court could not

[4] This Court has had three cases, M-05-257, M-06-137, and M-07-092, requesting a review of Judge Isgur's alleged jurisdiction over Global Limo, Inc., Johnny Partain, and Teresa Partain in case 05-07009 and this Court has failed to respond in all three cases.

explain the legal basis supporting Mr. Isgur's order to incarcerate Johnny Partain for taking rent on a house that Mr. Partain owned. After this Court's analysis, the only question still pending in the mind of the Court as represented by this Court was how did Mr. Isgur ever get jurisdiction in the first place? There appears to be contradiction, avoidance of the issues, or clear error of fact leading to this Court's Order which should be resolved.

3) Plaintiff objects that this Court has neglected to record in writing it's original analysis that Global Limo, Inc. was never in bankruptcy and under the jurisdiction of the bankruptcy courts as requested in Plaintiff's petition.

4) Plaintiff objects to clear error of Order in that it states [sic], "The parties do not dispute that on January 23, 2007, the U.S. Bankruptcy Court, Southern District of Texas McAllen Division held Petitioner in contempt for failing to release control of a condominium in violation of previous orders of the bankruptcy court in the adversary proceeding before it." Plaintiff has consistently disputed and provided evidence through Temporary Restraining Order (TRO) and Preliminary Injunction (PI) in case 05-07009 that there was no order "to release control of a condominium" prior to April 27, 2006. *See Original Petition For Writ Of Habeas Corpus*. Fact is that Maples et al. did not control the condominium, the condominium was of an earlier occurrence and other transaction than complained of in *Plaintiffs' Original Complaint For Injunctive Relief And Request For Temporary Restraining Order*, there was no complaint including the condominium in Maples et al.'s original petition, and there was no order to turnover the condominium to Maples et al. until after final disposition of case 05-07009 on April 27, 2006. Accordingly, how could Mr. Partain be in contempt of an order that does not exist? Further,

Bankruptcy Court never acquired the jurisdiction to make a valid order to seize Mr. Partain's condominium since it never belonged to Maple et al. in the first place and Global Limo, Inc. was not in bankruptcy.

5) Plaintiff objects that Order recites invalidated facts from bankruptcy Court's orders in TRO and PI regarding Maples' beneficial ownership to all corporate assets when final disposition of case 05-07009 shows that Johnny Partain was the actual owner of all Global Limo, Inc. interests , legal and equitable, through Texas County Court at Law No. 1 Turnover Order. Mr. Isgur refused to acknowledge the County Court's orders or authority as required by 28 U.S.C 1738. 28 U.S.C. 1738 states in relevant part; "The records and judicial proceedings of any court of any such State,...records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken." *See Temporary Restraining Order at 1, Footnote No. 1.*

6) Plaintiff objects that this Court failed to acknowledge or recognize the authority of Turnover Order issued by County Court at Law No. 1 in cause CL-29,530-A prior to petition in adversary case 05-07009. This turnover order obviously removes standing of Maples to petition for injunction and deprives the Court of jurisdiction in case 05-07009.

7) Plaintiff objects that Order, footnote 1, takes judicial notice of "amended complaint" which the Court apparently and erroneously relates back to *Plaintiffs' Original Complaint For Injunctive Relief And Request For Temporary Restraining Order*. An amended petition claiming relief and allegedly

providing jurisdiction under the bankruptcy code[5] does not replace or relate back to an original petition that failed to invoke the courts jurisdiction in the first place. Burt v. City of New Boston, 2006 WL 722102 (E.D.Tex.); USA v. Curtis, 2007 WL 683941 (S.D.Miss.) (an amendment should not be allowed where the movant seeks to add an entirely new claim or new theory of relief). Final disposition of case 05-07009 found that Johnny Partain was the actual owner of Global Limo, Inc. shares[6], regardless of prior contrary claims, petitions, and orders by Judge Isgur that this Court cites in it's Order. The Plaintiff has consistently proponed and demonstrated that Mr. Isgur did not have jurisdiction in case 05-07009.

8) Plaintiff objects that this Court's failure to review Mr. Partain complaints to lack of jurisdiction, lack to breach of a responsive order, and lack of due process complaint improperly changes the character of Mr. Isgur's orders from criminal to civil or rather punitive versus coercive.

Plaintiff objects that this Court has failed to identify a reasonably specific order that Plaintiff violated. Before finding a party in contempt, a court must issue a reasonably specific order and the party must violate that order. Mr. Partain never violated an order.

ISSUES REQUESTED TO BE ADDRESSED IN FINDING OF FACT

In regards to the issues raised by the Plaintiff in this cause, Plaintiff offers the following queries and requests Court to include them and the finding thereto in an amended Finding of Facts and Conclusion of Law:

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[5] Jurisdiction may only attach to the shares of Global Limo, Inc. only, provided certain qualifications, but not to the corporation or it's assets or to any transactions thereof.

[6] Bankruptcy avoidance is impossible and meaningless without a prior transfer, 11USC§547 (b).

a) How was Johnny Partain's and Teresa Partain's condominium under the control of Maples et al.?

b) How does the Court resolve that Mr. Isgur seized assets from Johnny Partain and Global Limo, Inc. although Global Limo, Inc. was never a party to any proceedings and that Johnny Partain was actually found to be the owner of the property pursuant to alleged avoidance actions under bankruptcy code?

c) Since there was an existing county court order endowing Johnny Partain with the real and equitable ownership of Global Limo, Inc., what legal authority gave the bankruptcy court the authority to seize those assets through a TRO and PI, and how is that authority applied?

d) Johnny Partain was never held in contempt in two previous contempt trials, but he was held in contempt in hearing on or about January 23, 2007, without evidence and only after complaining of fraud and racketeering to the 5th Circuit in Marvin Isgur's court. How is it that Johnny Partain was found innocent of any contempt in two prior full contempt trials under Mr. Isgur but was found guilty of contempt without any specific evidence or order on or about January 23, 2007?

e) Where does this Court find a complaint specifically accusing Johnny Partain of contempt as found by Mr. Isgur? Petitioner is entitled to have written notice that provides specific details of the alleged contempt, a stated time and place for a hearing on the charges, and a reasonable response time and none exists. BLR 9020.

f) How did Mr. Isgur ever obtain jurisdiction in case 05-07009 and why are such orders are not void ab initio.

g) How can Mr. Isgur refuse to withdraw from case 05-07009 when he is the subject of criminal complaints of fraud and racketeering with Texas State Bank and he has issued orders while outside his jurisdiction

effectively endangering and terminating the lives of 23 persons in violation of 18 U.S.C. §242? If Mr. Isgur faces possible multiple life sentences for breach of the criminal code and death, doesn't Mr. Isgur have an interest in the outcome of case 05-07009? Does the judiciary have an interest under judicial canons to protect Mr. Isgur or do constitutional rights and U.S. criminal code prevail?

WHEREFORE PREMISES CONSIDERED, Plaintiff prays this Court vacates *Order Dismissing Petition For Writ Of Habeas Corpus As Moot*; that a timely and meaningful hearing on the issues be conducted wherefrom this Court resolves issues concerning jurisdiction, seizure, protection, and avoidance; that an amended findings of fact and conclusion of law addressing all of Plaintiff's issues and objections be entered, including questions herein; and that a summary judgment be entered as previously requested. Plaintiff prays for all other relief in equity and in law he may be entitled.

Respectfully Submitted,

/s/Johnny Partain
JOHNNY PARTAIN
7020 N 16th Street
McAllen, Texas 78504
956-240-1821

CAUSE NO. CL-29,530-A

JOHNNY PARTAIN and	§ IN THE COUNTY
TERESA PARTAIN	§ COURT
	§
Vs.	§
	§
JAMES H. MAPLES,	§
INDIVIDUALLY and	§ AT LAW NO. 1 OF
d/b/a GLOBAL TOURS &	§
CHARTERS and	§
KATHY MAPLES,	§
INDIVIDUALLY and	§
d/b/a KBM BUS LEASING,	§
INC. and KBM BUS	§ HIDALGO COUNTY,
LEASING, INC.	§ TEXAS

ORDER

Through this Court's jurisdiction over Judgment and Parties of the above styled and numbered cause and through Texas Civil Practice and Remedies Codes, especially Chapter 31, § 31.002, Collection of Judgment through Court Proceeding, it is determined that the property conveyed herein is in the possession or ownership of the Judgment Debtors, that the property cannot be readily attached or levied on by ordinary legal process, and that the property is not exempt form attachment, execution, or seizure of the satisfaction of liabilities.

It is ORDERED, ADJUDGED, and DECREED all Corporation Stocks and Shares Certificates in Global Limo Incorporated, a Texas Corporation, shall immediately pass title and ownership to Johnny Partain. Katherine Maples and James Maples shall reasonably deliver, with all haste and without delay, all Corporation documents and Corporation records to this Court's Clerk at Hidalgo County Courthouse, County Clerk's Office, 100 North Closner, Edinburg, Texas. The Clerk shall store these documents until released by this Court.

The Court may ENFORCE the ORDER by proceedings for contempt in the case of disobedience.

Signed this day, January 287, 2005.

/s/ Rudolfo Gonzalez
Judge Presiding

SPECIAL WARRANTY DEED

DATE: January 27, 2005

GRANTOR: GLOBAL LIMO, INC., a Texas Corportaion; JOHNNY PARTAIN, Sole Shareholder and Director of Global Limo, Inc.

GRANTOR'S MAILING ADDRESS: 7020 N 16th Street
McAllen, Texas 78504

GRANTEE: JOHNNY PARTAIN and TERESA PARTAIN

GRANTEE'S MAILING ADDRESS: 7020 N 16th Street
McAllen, Texas 78504

CONSIDERATION: In and for the payment of $10, the receipt of which is hereby acknowledged by the Grantor.

PROPERTY DESCRIPTION:

The East 18.41 feet of the West 60.82 feet of Lot 37, El Cazador Subdivision, Unit No. 2, an addition to the City of McAllen, Hidalgo County, Texas, according to map thereof recorded in volume 19, page 58 of the Map Records of Hidalgo County, reference to which is herein made for all purposes.

For consideration, Grantor sells, deeds and conveys to Grantee all of Grantor's right, title, and interest in and to the aforementioned property, to have and to hold it, to Grantee, Grantee's successors and assigns forever. Grantor hereinafter agrees to warrant and defend title to Grantee only of anyone claiming by or through him. Furthermore,

this deed is subject to all liens, indebtedness and encumbrances of record, or which are visible.

/s/Johnny Partain
JOHNNY PARTAIN

STATE OF TEXAS §
§
COUNTY OF HIDALGO §

This instrument was acknowledged to be the act and deed of Grantor on this the 28th day of January, 2005, by JOHNNY PARTAIN and through authority of certified ORDER endowing title all Global Limo stock and shares unto JOHNNY PARTAIN.

/s/ Oscar Martinez, Jr.
NOTARY PUBLIC

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

IN RE:	§	
JAMES HOWARD MAPLES; fdba	§	CASE NO:
GLOBAL TOURS & CHARTERS, *et al*	§	05-70128
Debtor(s)	§	
	§	CHAPTER 11
JAMES HOWARD MAPLES, *et al*	§	
Plaintiff(s)	§	
VS.	§	
	§	ADVERSARY NO.
JOHNNY PARTAIN, *et al*	§	05-7009
Defendant(s)	§	

PLAINTIFFS' ORIGINAL COMPLAINT FOR INJUNCTIVE RELIEF AND REQUEST FOR TEMPORARY RESTRAINING ORDER

TO THE HONORABLE U.S. BANKRUPTCY JUDGE:

NOW COMES JAMES H. MAPLES ans VIRGINIA KATHLEEN MAPLES, Plaintiffs, file this their Original Complaint For Injunctive Relief And Request For Temporary Restraining Order, and in support thereof, would respectfully show:

1. Debtors filed a voluntary chapter 11 petition on February 16, 2005 in the case styled In re James H. Maples and Virginia Kathleen Maples, Bankruptcy Case No. 05-70128 in the U.S. Bankruptcy Court For The Southern District of Texas, McAllen Division. Jurisdiction is based on 28 U.S.C. § 157(b)(1) and Plaintiffs submit the matter is a core matter under 28 U.S.C. § 157(b)(2)(O). Plaintiffs are debtors in bankruptcy domiciled in Hidalgo County, Texas. Defendants JOHNNY PARTAIN and TERESA PARTAIN are on information and belief married individuals who can be served with process at 7020 N. 16th, McAllen, Texas 78504.

2. Shortly before filing, in a lawsuit pending in Hidalgo County Court At Law Number One styled Johnny Partain

and Teresa Partain v. James H. Maples et al., Cause No. CL-29,530-A, Johnny Partain and Teresa Partain (Plaintiffs in said action and Defendants herein) obtained a turnover order from the Hidalgo County Court At Law Number One for turnover of among other things stock in Global Limo, Inc. The Defendants have obtained a judgment in that case for approximately $93,500.00 plus interest against Plaintiff James H. Maples. Prior to the service of that order and prior to any turnover of stock, Plaintiffs filed the instant chapter 11. Plaintiffs remain in physical possession and control of all stock in Global Limo, Inc.

3. As of February 16, 2005, the date of filing of the chapter 11 petition by the Plaintiffs, the the charter of Global Limo, Inc. was not in good standing with the Texas Secretary of State. Several months earlier, the charter had been forfeited due to non-payment of franchise taxes.

4. As a result of the forfeiture of the charter of Global Limo, Inc., Plaintiffs became the beneficial and titled owner of all assets formerly belonging to Global Limo, Inc.

5. On the morning of March 7, 2005, Defendant JOHNNY PARTAIN showed up and the business premises of GLOBAL LIMO, INC. and removed from the premises belongings and items owned by GLOBAL LIMO, INC. JOHNNY PARTAIN seized three buses that were being operated under the name of Global Limo, Inc. In addition, said Defendant seized mail, personal correspondence, bank statements, a cash box containing approximately $4,300.00 in customer checks, and other items. The three buses were later returned to the premises of Global Limo, Inc. after a turnover motion had been filed.

6. In addition, Defendant JOHNNY PARTAIN has caused the mail of Global Limo, Inc. to be forwarded away from the business address of Global Limo, Inc. to the home of Defendants JOHNNY PARTAIN and TERESA PARTAIN. As a result, payments for bus charters for Global Limo, Inc. are being intercepted by Defendants. As a

result, Defendants are starving the Plaintiffs of the cash necessary to operate the Global Limo, Inc. business and to pay for the charters that have been ordered by customers.

7. Prior to the time of seizure of the property, Defendant JOHNNY PARTAIN was informed by officials of Texas State Bank that Texas State Bank had a first lien on the property and that Texas State Bank did not consent to said collateral being moved. PARTAIN disregarded the lienholders instructions and proceeded to remove the property. In addition, a notice of the bankruptcy filing was filed in the state court lawsuit pending in Hidalgo County Court At Law Number One which stayed a hearing in that case; thus, JOHNNY PARTAIN and TERESA PARTAIN had been given notice of the bankruptcy filing prior to the seizure of assets.

8. The actions of JOHNNY PARTAIN and TERESA PARTAIN in taking actions to collect on the state court judgment after the filing of the chapter 11 bankruptcy constitutes a contempt of court and a violation of 11 U.S.C. Section 362. Plaintiffs pray that Defendants JOHNNY PARTAIN and TERESA PARTAIN be held in contempt of court for violation of the automaic stay imposed by 11 U.S.C. Section 362.

9. When a corporate charter is forfeited, the individual shareholders become beneficial owners of the assets of the corporation:

> The Supreme Court of Texas has held that where the Secretary of State has entered on the record in his office forfeiture of the right of the corporation to do business in this state, the charter of the corporation has not thereby been cancelled nor has the corporation been dissolved. The effect of such a forfeiture is to prohibit the corporation from doing business in the state, and to deny to it the right to sue or defend in any court of the state except in a suit to forfeit its charter. The legal title to the assets remains in the corporation, but the beneficial title to the assets of the corporation is in the

> stockholders. This being true, and since the right to sue has been denied to the corporation by forfeiture, the stockholders, as beneficial owners of the assets of the corporation, may prosecute or defend such actions in the courts as may be necessary to protect their property rights.

Edlund v. Bounds, 842 S.W.2d 719, 727 (Tex.App.-Dallas 1992, writ denied); Regal Constr. Co. v. Hansel, 596 S.W.2d 150, 153 (Tex.Civ.App.--Houston [1st Dist.] 1979, writ ref'd n.r.e.) (citing Humble Oil & Refining Co. v. Blankenburg, 149 Tex. 498, 235 S.W.2d 891,894 (Tex.1951)).

10. As such is the case, the Plaintiffs are beneficial owner of the assets of Global Limo, Inc., and the automatic stay of 11 U.S.C. Section 362 would protect the assets of Global Limo, Inc. for which Plaintiffs were the beneficial owners at the time of the filing of the chapter 11 bankruptcy.

11. Defendants through JOHNNY PARTAIN have indicated that their position is that the turnover order passed title to the Global Limo, Inc. shares by virtue of Section 31.001 of the Texas Civ. Prac. & Rem. Code. Section 31.001 of the Texas Civil Practice & Remedies Code provides as follows:

> § 31.001. Passage of Title.
>
> A judgment **for the conveyance of real property or the delivery of personal property** may pass title to the property without additional action by the party against whom the judgment is rendered. Tex. Civ. Prac. & Rem. Code §31.001 (boldfaced emphasis added).

12. Partain's argument fails in light of the very wording of the statute. For the statute to apply, there must be a judgment for the conveyance of real property or the delivery of personal property. The judgment in question was for fraud, not for conveyance of real property or the delivery of personal property. The reasoning of such a statute is apparent, for if the entire purpose of the lawsuit is to obtain

conveyance of real property or delivery of personal property, all issues regarding entitlement to the real or personal property will have been litigated prior to entry of the judgment. In the case at bar, however, obtaining possession of the stock shares was not the stated purpose of the lawsuit, nor was delivery of the stock shares part of the judgment. The stock shares only came into issue after judgment had been obtained and Partain was seeking collection of the judgment. The judgment in the case is not for conveyance of real property or for delivery of personal property. Thus, 31.001 does not apply.

13. The Texas turnover statute, Tex. Civ. Prac. & Rem. Code § 31.001 provides as follows:

> § 31.002. Collection of Judgment Through Court Proceeding.
>
> (a) A judgment creditor is entitled to aid from a court of appropriate jurisdiction through injunction or other means in order to reach property to obtain satisfaction on the judgment if the judgment debtor owns property, including present or future rights to property, that:
>
> (1) cannot readily be attached or levied on by ordinary legal process; and
>
> (2) is not exempt from attachment, execution, or seizure for the satisfaction of liabilities.
>
> (b) The court may:
>
> (1) order the judgment debtor to turn over nonexempt property that is in the debtor's possession or is subject to the debtor's control, together with all documents or records related to the property, to a designated sheriff or constable for execution;
>
> (2) otherwise apply the property to the satisfaction of the judgment; or
>
> (3) appoint a receiver with the authority to take possession of the nonexempt property, sell it, and pay the proceeds to the judgment creditor to the extent required to satisfy the judgment.

(c) The court may enforce the order by contempt proceedings or by other appropriate means in the event of refusal or disobedience.

(d) The judgment creditor may move for the court's assistance under this section in the same proceeding in which the judgment is rendered or in an independent proceeding.

(e) The judgment creditor is entitled to recover reasonable costs, including attorney's fees.

(f) A court may not enter or enforce an order under this section that requires the turnover of the proceeds of, or the disbursement of, property exempt under any statute, including Section 42.0021, Property Code. This subsection does not apply to the enforcement of a child support obligation or a judgment for past due child support.

(g) With respect to turnover of property held by a financial institution in the name of or on behalf of the judgment debtor as customer of the financial institution, the rights of a receiver appointed under Subsection (b)(3) do not attach until the financial institution receives service of a certified copy of the order of receivership in the manner specified by Section 59.008, Finance Code.

Tex. Civ. Prac. & Rem. Code §31.002.

14. As can be seen from the actual text of Tex. Civ. Prac. & Rem. Code §31.002, subsection (b) requires that any property that is ordered to be turned over shall be surrendered by the debtor to the sheriff or constable for execution. Such was never done in the case at bar, as the chapter 11 was filed before the property could be turned

over to the designated third party, in this case the Hidalgo County Clerk.

15. The Texas Supreme Court has held that turnover of assets directly to a creditor is not allowed:

"At least one commentator has suggested the statute allows turnover directly to judgment creditors in certain circumstances. Hittner, Texas Post-Judgment Turnover and Receivership Statutes, 45 Tex.B.J. 417, 419 (1982). The report of the House Committee on Judicial Affairs does not support this view, however. That report states:

> "The changes which [the bill] makes are open-ended in that they allow a judgment creditor to get aid in collection from the Court in the form of an order which requires the debtor to bring to the Court all documents and property used to satisfy a judgment. The actual effect of the bill is to require the burden of production of property which is subject to execution to be placed with the debtor instead of a creditor attempting to satisfy his judgment...

House Comm. on Judicial Affairs, Bill Analysis, Tex.H.B. 1260, 66th Leg. (1979) (emphasis added).

"In light of this language, we cannot presume the legislature intended article 3827a to deny judgment debtors any measure of judicial protection in post-judgment collection proceedings. The potential for error or abuse where turnover is ordered directly to judgment creditors is obvious, considering that the statute allows ex parte entry of the order without notice and hearing. Cf. Finberg v. Sullivan, 634 F.2d 50 (3d Cir.1980); Brown v. Liberty Loan Corp. of Duval, 539 F.2d 1355 (5th Cir.1976), cert. denied, 430 U.S. 949, 97 S.Ct. 1588, 51 L.Ed. 797 (1977). A debtor who in good faith complies with an order to turn items directly over to a judgment creditor may be denied any opportunity to assert defenses should the judgment creditor promptly or improperly dispose of the items. Such practice would not promote fair and orderly administration of justice. **The trial court erred in ordering turnover**

directly to judgment creditors. Ex parte Johnson,654 S.W.2d 415, 418-419 (Tex. 1983)(boldfaced emphasis added).

16. Justice Gonzalez in a concurring opinion expounded on use of turnover orders against third parties:

> ". . .A turnover order that issues against a non-party for property not subject to the control of the judgment debtor completely bypasses our system of affording due process. Otherwise, a court could simply order anyone (a bank, an insurance company, or the like) alleged to owe money to a judgment debtor to hand over cash on threat of imprisonment.
>
> "A number of other courts have also concluded that a turnover order is not a shortcut to bypass proceedings that afford third parties due process. They have come to the conclusion that the turnover statute is a purely procedural mechanism to aid in collecting judgment, but does not provide a substitute for other proceedings to adjudicate the substantive rights of third parties. See, e.g., Cross, Kieschnick & Co. v. Johnston, 892 S.W.2d 435, 439 (Tex.App.--San Antonio 1994, no writ) (reversing judgment rendered against partners when underlying judgment involved corporation, holding that it was improper as matter of law to issue order against non-judgment debtor); Republic Ins. Co. v. Millard, 825 S.W.2d 780, 783 (Tex.App.--Houston [14th Dist.] 1992, orig. proceeding) (issuing mandamus on grounds that trial court abused its discretion by including debtor's insurance company in turnover order when creditors sought title to debtor's cause of action against insured); Cravens, Dargan & Co. v. Peyton L. Travers Co., 770 S.W.2d 573, 576-77 (Tex.App.—Houston [1st Dist.] 1989, writ denied) (finding that turnover statute could not be used as procedural tool against State Board of Insurance to reach debtor's financial-responsibility deposit with that agency); United Bank Metro v.Plains Overseas

Group, Inc., 670 S.W.2d 281, 284 (Tex.App.—Houston [1st Dist.] 1983, no writ) (determining that creditor who obtained judgment against individual was not entitled to turnover order against corporation until creditor successfully pierced corporate veil in separate proceeding); Steenland v. Texas Commerce Bank Nat'l Ass'n, 648 S.W.2d 387, 390-91 (Tex.App.--Tyler 1983, writ ref'd n.r.e.) (concluding that turnover statute does not authorize appointment of receiver to sell homestead to obtain its non exempt excess value until substantive issues are established in separate proceeding brought for that purpose).

" A turnover order is not a substitute for established remedies allowing a creditor to reach property owned by the judgment debtor claimed to be in the possession of a stranger to the lawsuit. A creditor may seek garnishment against third parties or join them in a suit against the debtor and, if successful, obtain a turnover order against the third party. However, a creditor may not seek a turnover order against third parties without other initial proceedings."

Ex parte Swate, 922 S.W.2d 122, 125-126 (Tex. 1996)(Gonzalez, J., concurring).

17. The purpose of the turnover statute is to "merely ascertain whether an asset is either in the judgment debtor's possession or subject to the debtor's control." Republic Ins. Co. v. Millard, 825 S.W.2d 780, 783 (Tex.App. Houston [14th Dist.] 1992, no writ). "It does not create a right in the judgment creditors and debtors to initiate and incorporate in the proceedings an entirely different law suit against a third party who is not a part of the original judgment." Republic, 825 S.W.2d at 783.

18. From the very terms of the statute, as well as from the above-cited case law, it is clear that the turnover

statute requires that property be turned over to the sheriff or constable for execution. There was never any turnover of assets, much less execution by a sheriff or constable, so the stock certificates remained the property of the Debtors.

19. Plaintiffs are being irreparably harmed by the actions of JOHNNY PARTAIN and TERESA PARTAIN in continuing to take actions to collect on the state court judgment despite the filing of the bankruptcy petition and in violation of 11 U.S.C. Section 362. Plaintiffs have a clear right to be free of collection actions of Defendants JOHNNY PARTAIN and TERESA PARTAIN while they remain under the protection of Title 11 and Section 362 of Title 11. Defendants JOHNNY PARTAIN and TERESA PARTAIN by continuing collection action against the Plaintiffs by continued enforcement of the judgment against the Plaintiffs despite the filing of the chapter 11 petition are dissipating the value of assets owned by the Plaintiffs in violation of the automatic stay. Plaintiffs are most likely to prevail in against JOHNNY PARTAIN and TERESA PARTAIN in asserting claims that the seizure of property from GLOBAL LIMO, INC. in collection of a judgment against Plaintiffs is wrongful in that it violated the automatic stay imposed by 11 U.S.C. Section 362. Plaintiffs thus pray that the Court issue a temporary restraining order under its equitable powers to restrain Defendants JOHNNY PARTAIN and TERESA PARTAIN, their agents, servants, and representatives, from taking any further action in furtherance of collection of the judgment, including the enforcement of turnover orders, in the case styled Johnny Partain and Teresa Partain v. James H. Maples et al., Cause no. CL-29,530-A. Plaintiffs further pray that after notice and hearing the court issue a temporary injunction and final injunction enjoining Defendants JOHNNY PARTAIN and TERESA PARTAIN, their agents, servants, and representatives, from taking any further action in furtherance of collection of the judgment, including the enforcement of turnover orders, in

the case styled Johnny Partain and Teresa Partain v. James H. Maples et al., Cause no. CL-29,530-A

20. Plaintiffs attach the affidavit of James H. Maples as Exhibit 1 in support of this motion.

21. Plaintiffs pray that the Court enter a temporary restraining order requiring JOHNNY PARTAIN and TERESA PARTAIN to turnover instanter to the U.S. Marshall's Service at the place of business of GLOBAL LIMO, INC. all properties seized by the JOHNNY PARTAIN and TERESA PARTAIN from the offices of GLOBAL LIMO, INC., including cash, checks, equipment, mail, and documents. Plaintiffs further pray that a temporary restraining order issue prohibiting Defendants from diverting mail, seizing checks, seizing assets, or interfering with the business operations of Global Limo, Inc., and further issue a temporary restraining order authorizing Plaintiffs to act on behalf of Global Limo, Inc. when dealing with banks, creditors, and customers. Plaintiffs further pray that the Court enter a preliminary injunction and permanent injunction consistent with the temporary restraining order. Plaintiffs further pray for such other and further relief to which Plaintiffs may be justly entitled.

Respectfully submitted,
/s/Kelly K. McKinnis
KELLY K. McKINNIS
Southern Dist. ID No. 10266
612 Nolana, Suite 240
McAllen TX 78504
(956)686-7039
(956)686-8261 facsimile

STATE OF TEXAS §
§

COUNTY OF HIDALGO §

BEFORE ME, the undersigned authority, on this day personally appeared JAMES H. MAPLES, who upon being duly sworn upon oath, deposed and stated as follows:

"My name is James H. Maples. I am over the age of 18 years and have never been convicted of a felony or declared mentally incompetent. I have personal knowledge of all facts stated herein because they involve or concern matters about my personal or business financial affairs. All facts stated herein are true and correct.

"I have read the foregoing Plaintiffs' Original Complaint, and it is true and correct."

FURTHER THE AFFIANT SAYETH NOT.

/s/James H. Maples
JAMES H. MAPLES,
Affiant

SUBSCRIBED AND SWORN to by the said JAMES H. MAPLES, to certify which witness my hand and seal of office this 28th day of March, 2005.

/s/Lucia A. Perez
Notary Public, State of Texas
My Commission Expires: 01-22-2006

STATE OF TEXAS §
§ AFFIDAVIT
COUNTY OF HIDALGO §

BEFORE ME, the undersigned authority, on this day personally appeared JAMES H. MAPLES, who upon being duly sworn upon oath, deposed and stated as follows:

"My name is James H. Maples. I am over the age of 18 years and have never been convicted of a felony or declared mentally incompetent. I have personal knowledge of all facts stated herein because they involve or concern matters about my personal or business financial affairs. All facts stated herein are true and correct.

"On February 16, 2005, my wife Virginia Kathleen Maples and I filed a joint voluntary petition under chapter 11 of the bankruptcy code. Our case is styled In re James H. Maples and Virginia Kathleen Maples, Bankruptcy Case No. 05 70128 in the U.S. Bankruptcy Court For The Southern District of Texas, McAllen Division.

"Global Limo, Inc. is a Texas-based corporation which engages in the tour and charter business. I started the corporation a few years ago and when the corporation was formed I was the sole shareholder. I still physical possess the corporate book and all of the outstanding shares of Global Limo, Inc.

"I have been engaged in state court litigation with Johnny Partain and Teresa Partain. The style of that lawsuit is Johnny Partain and Teresa Partain v. James H. Maples et al., Cause No. CL- 29,530-A in Hidalgo County Court At Law Number One. A judgment of approximately $93,500.00 has been rendered against me in the case. Shortly before the filing of the bankruptcy, Johnny Partain

and Teresa Partain in the State Court Lawsuit obtained a turnover order which required Plaintiff James H. Maples to turnover stock in Global Limo, Inc. to the Hidalgo County Clerk. The order also purports to pass title of the Global Limo, Inc. stock to Johnny Partain and Teresa Partain. Before this order could effectuated, Plaintiffs filed the instant chapter 11, and the shares of stock were never handed over to the Hidalgo County Clerk or to Johnny Partain or Teresa Partain.

"The corporate charter of Global Limo, Inc. was forfeited for nonpayment of franchise fees on June 14, 2004. At the time of the filing of the bankruptcy petition on February 16, 2005, the corporate charter remained forfeited. Johnny Partain has admitted that he paid the fee to reinstate the corporate charter. The corporate charter was not reinstated until February 17, 2005.

"On March 7, 2005, Johnny Partain and others working with him showed up to the premises where Global Limo, Inc. offices and removed assets, including buses, office furnishings, checks, and mail and correspondence. Partain also removed papers relating to the Plaintiffs' indebtedness on real estate located in Mount Vernon, Texas. Also, Johnny Partain has caused the United States Postal Service to forward all mail of Global Limo, Inc. to the home address of Johnny Partain and Teresa Partain, which is 7020 N. 16th, McAllen TX 78504.

"With the forwarding of the mail, checks belonging to Global Limo, Inc. for charters and tours are not reaching the office of Global Limo, Inc. but instead are being diverted to the residence of Johnny Partain and Teresa Partain. As a result, the operations of Global Limo, Inc. are being deprived of the cash flow necessary to operate. Johnny Partain has by agreed order in the underlying bankruptcy allowed payment of approximately one week's worth of expenses, but new operating expenses are due for salary and fuel for charters.

"Within the past 40 days, Johnny Partain has also deeded a condominium titled in the name of Global Limo,

Inc. which I estimate may be worth around $75,000.00 to himself on behalf of Global Limo, Inc.

"I have never surrendered the corporate shares of Global Limo, Inc. to anyone and I remain in physical possession of the shares of Global Limo, Inc. At the time our chapter 11 bankruptcy was filed, the corporate charter of Global Limo, Inc. was forfeited, and I have been advised that as a share owner I would have beneficial ownership of the assets of Global Limo, Inc.

"If Johnny Partain and Teresa Partain are allowed to persist in their efforts to sabotage the operations of Global Limo, Inc. by remaining in possession of assets seized after the filing of our bankruptcy, including checks payable to Global Limo, Inc., the business will not be able to continue to operate. I am the party who signed personal guarantees on the notes secured by assets in the name of Global Limo, Inc., and if I am no longer the ownership of the corporation, then I do not believe that the bank which holds security on the assets would continue to finance the business operations of Global Limo, Inc. Should that business fail, my business and my employment will be lost and my efforts to reorganize would be dramatically harmed, as my cash flow would be reduced substantially if not eliminated. Once lost, no amount of cash would be able to compensate me for the loss of the business and the loss of my employment. I have worked hard for years to form a first class business and all of that will be lost if the Defendants are allowed to disrupt the business operations of Global Limo, Inc. by remaining in possession of seized assets and by being allowed to continue to interfere with the business operations of Global Limo, Inc.

"I have already lost in excess of $30,000.00 of business revenues as a result of the actions of Johnny Partain in seizing assets and checks of Global Limo, Inc. Global Limo, Inc. will not be able to survive unless the court intervenes. I am requesting that the Court enter an order requiring Defendants and their agents to return immediately to me all assets taken or diverted from Global Limo, Inc.,

including checks, drafts, documents, mail, equipment, computers, and buses, and that Defendant be restrained and enjoined from diverting mail, seizing assets, and interfering with the business operations of Global Limo, Inc."

FURTHER THE AFFIANT SAYETH NOT.

/s/James H. Maples
JAMES H. MAPLES, Affiant

SUBSCRIBED AND SWORN to by the said JAMES H. MAPLES, to certify which witness my hand and seal of office this *28th* day of March, 2005.

/s/Lucia A. Perez
Notary Public, State of Texas
Commission Expires 01-22-2006

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

IN RE:	§	
JAMES HOWARD MAPLES; fdba	§	CASE NO:
GLOBAL TOURS & CHARTERS, *et al*	§	05-70128
Debtor(s)	§	
	§	CHAPTER 11
JAMES HOWARD MAPLES, *et al*	§	
Plaintiff(s)	§	
VS.	§	
	§	ADVERSARY NO.
JOHNNY PARTAIN, *et al*	§	05-7009
Defendant(s)	§	

TEMPORARY RESTRAINING ORDER

For the reasons set forth herein, the Court grants the Debtor's application for a temporary restraining order. The Court conducted a hearing on the application for a temporary restraining order on limited notice. At the commencement of the hearing, the applicants set forth the efforts that had been made to give notice of the hearing, and the Defendants participated in the hearing. Under these circumstances, the Court find that notice of the hearing is adequate.

In issuing this Temporary Restraining Order, the Court has considered the following factors; (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable harm if the injunction is not granted; (3) that the threatened injury to the movant outweighs any harm to the nonmovant that may result from the injunction; and (4) that the injunction will not undermine the public interest. *Valley v. Rapides Parish School Board*, 118 F.3d 1047 (5th Cir. 1997); *Guy Carpenter & Co., Inc. v. Provenzale*, 334 F.3d 459, 464 (5th Cir. 2003).

The principal issue in this case is whether the Defendants violated 11 U.S.C. § 362 by exercising control over property in the estate's possession. 11 U.S.C. § 362(a)(3). Based on the admissions by the Defendants, and the affidavit in support of the application, the Court concludes that the Defendants violated the automatic stay by exercising their rights under a state court turnover order[1] to take possession of property in the Applicants' possession. If this Order is not issued, the Court concludes that it is likely that there will be a dissipation of the Applicants' business due to an inability to utilize the estate property.

This Court conducted a hearing on the application for a temporary restraining order on March 29, 2005.

1. With respect to the probability of success on the merits, there is a reasonable probability of success on the merits. Based on the allegations in Mr. Maple's affidavit, it appears that the Applicants have a substantial likelihood of prevailing on the merits of this case. The test established by the Fifth Circuit is not a certainty of success; rather the test is a "reasonable probability." Under the circumstances, the Court finds a reasonable probability of success by the Applicants.

2. With respect to immediate, irreparable injury, the Court finds that the diversion of property of the estate that is necessary for the continuation of the Applicants' business constitutes irreparable injury.

3. With respect to the comparative injuries to the Applicants and the Defendants, the Court finds that the relative injuries are in equilibrium. If the Applicant are correct in their allegations, then the Applicant will be harmed by the loss of their business. If the Applicant are

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[1] The Court makes no finding whether the exercise was under a correct interpretation of the state court order.

incorrect, then the Defendants would be deprived of their use of the assets without just cause.

4. With respect to the public interest, the Court finds that the public interest is implicated in this matter because there is a strong public policy in both protecting the rights established under the Bankruptcy Code and respecting court orders such as the turnover order issued by the state court. In this case, the state court turnover the shares of the Corporation. The Court finds that this factor weighs slightly in favor of the Defendants.

5. In accordance with Bankruptcy Rule 7065, no bond is required by the Applicants.

6. This temporary restraining order shall expire at 6:30 p.m. on April 8, 2005, unless otherwise ordered by the Court.

7. A preliminary injunction hearing will be held at 3:30 p.m. on April 8, 2005.

8. The Court will conduct a status conference at 4:30 p.m. on April 19, 2004.

9. The Court will consider motion to amend or vacate this order on an emergency basis.

10. It is ORDERED that

i. The Defendants shall return all of the seized assets to the Applicants by 5:00p.m. on March 30, 2005.

ii. The Defendants shall return all of the intercepted and redirected mail to the Applicants.

iii. The Defendants shall cause all mail addresses that had been changed to be returned to the previous addresses.

iv. The Defendants and Applicants shall record instruments in the real property records preventing the sale, transfer, and/or encumbrance of the two parcels of real property at issue in the proceeding.

v. In lieu of a bond, the Applicants are enjoined and prohibited from using, transferring, selling or encumbering, any property or assets in any manner outside the ordinary course of business.

vi. The Applicants are required to provide the Defendants with full access to the records of their business. Applicants shall further provide comprehensive weekly financial reports on each Friday. Said record shall be current to within the immediately prior Tuesday before production.

vii. If there is any attempt to sell assets through the Bankruptcy Court, the Defendants shall be provided with notice. Any proceeds of such a sale shall be held in escrow until the parties' rights in the property are adjudicated.

Signed at Houston, Texas on March 29, 2005 at 9:17p.m.

/s/ Marvin Isgur
MARVIN ISGUR
United States Bankruptcy Court

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

IN RE:	§	
JAMES HOWARD MAPLES; fdba	§	CASE NO:
GLOBAL TOURS & CHARTERS, *et al*	§	05-70128
Debtor(s)	§	
	§	CHAPTER 11
JAMES HOWARD MAPLES, *et al*	§	
Plaintiff(s)	§	
VS.	§	
	§	ADVERSARY NO.
JOHNNY PARTAIN, *et al*	§	05-7009
Defendant(s)	§	

ORDER GRANTING PRELIMINARY INJUNCTION

Pursuant to Rule 7065 of the Federal Rules of Bankruptcy Procedure, the Court issues this preliminary injunction. This preliminary injunction expires at 5:00 p.m. on October 17, 2005, unless otherwise ordered.

Background

The Debtors filed a voluntary petition under chapter 11 on February 16, 2005. Prior to the bankruptcy filing, Defendants in the above-referenced adversary proceeding, Johnny Partain and Teresa Partain, filed a lawsuit in Hidalgo County, Texas, against the Plaintiff in this adversary proceeding, James H. Maples, and obtained a turnover order on January 27, 2005. The turnover order required that Mr. Maples turnover, among other things, stock in Global Limo, Inc. At the time the turnover order was entered, Mr. Maples was in possession of the stock.

Several months prior to the filing of this bankruptcy case, Global Limo, Inc.'s corporate charter had been forfeited due to non-payment of franchise taxes. Thus, the charter was not in good standing with the Texas Secretary of State when this bankruptcy case was filed on February

16, 2005. The Maples were the sole shareholders of Global Limo, Inc. prior to the charter's forfeiture. Therefore, under Texas law, they became the beneficial owners of all assets formerly belonging to the company upon forfeiture of the charter. *See, e.g. Edlund v. Bounds* , 842 S.W.2d 719, 727 (Tex. App. – Dallas 1992, *writ denied*); *Regal Constr. Co. v. Hansel* , 596 S.W.2d 150, 153 (Tex. Civ. App. – Houston [1st Dist.] 1979, *writ ref'd n.r.e.*); *Humble Oil & Refining Co. v. Blankenburg* , 235 S.W.2d 891, 894 (Tex. 1951). Texas State Bank held a first lien on the former assets of Global Limo, Inc.

On February 18, 2005 (two days after the Maples' bankruptcy filing), Mr. Partain reinstated Global Limo, Inc.'s charter with the Texas Secretary of State. On March 7, 2005, Mr. Partain removed three Global Limo, Inc. buses from the company's premises. These buses were being operated under the name of Global Limo, Inc., and were under the beneficial ownership of Mr. Maples. Mr. Partain further seized mail, personal correspondence, bank statements, and a metal cash box containing uncashed customer checks, check stubs, and cash. Mr. Partain also took actions causing Global Limo, Inc.'s mail to be forwarded to the Partain's home address.

On March 28, 2005, the Debtors filed the above-referenced adversary proceeding seeking injunctive relief and alleging violations under 11 U.S.C. § 362.

Analysis

The Court conducted a hearing on March 29, 2005 regarding Plaintiffs' request for a temporary restraining order. The request was granted and the Court issued a TRO on March 29, 2005. The Court held a preliminary injunction hearing in this matter on May 16, 2005.

In issuing the preliminary injunction, the Court has considered the following factors: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable harm if the injunction is not granted; (3) that the threatened injury to the movant outweighs any harm to the nonmovant that may result from the injunction; and (4) that the injunction will not undermine the public interest. *Valley v. Rapides Parish School Board,* 118 F.3d 1047 (5th Cir. 1997); *Guy Carpenter & Co., Inc. v. Provenzale* , 334 F.3d 459, 464 (5th Cir. 2003).

The principal issue in this case is whether the Defendants violated 11 U.S.C. § 362 by exercising control over property in the estate's possession. Based on the testimony and other evidence admitted at the preliminary injunction hearing, the Court concludes that the Defendants violated the automatic stay by exercising their rights under a state court turnover order to take possession of property in the Applicants' possession. If this preliminary injunction is not issued, the Court concludes that it is likely that there will be a dissipation of the Applicants' business due to an inability to utilize estate property.

In evaluation this case under the four factors discussed above, the Court finds as follows:

1. With respect to the probability of success on the merits, there is a reasonable probability of success on the merits of a permanent injunction and other causes of action. Based on the testimony before the Court and other evidence admitted at the preliminary injunction hearing, it appears that the Applicants have a substantial likelihood of prevailing on the merits of this case and obtaining a permanent injunction. The Applicants may also bring other causes of action beyond the prayer for injunctive relief. These include a § 547 preference claim and a violation of

the automatic stay pursuant to § 362(a)(3). The test established by the Fifth Circuit is not a certainty of success; rather the test is a "reasonable probability."

The Court issued the initial TRO in an effort to curb actions by the Defendants in violation of the Bankruptcy Code. Upon filing the present bankruptcy case, the Maples' beneficial interests in the buses operated by Global Limo, Inc. became property of the Estate. Moreover, Mr. Maples was in actual possession of the buses and ancillary property. In addition to barring Mr. Partain from taking possession of "property of the estate" (i.e., Maples' beneficial interests), § 362(a)(3) barred Mr. Partain from taking possession of property "from the estate". The continued risk of the Defendants dispossessing the Estate of assets is what the Court must consider in the Debtors' present request for a preliminary injunction.

With respect to other causes of action beyond injunctive relief, Court will consider causes of action under § 362 and § 547. The state court turnover order was issued within 90 days prior to the bankruptcy filing. The order transferred property to Mr. Partain, a creditor of the Estate. Based on the evidence introduced at the preliminary injunction hearing, the state court turnover may represent an avoidable preference pursuant to § 547.

Further, by reinstating Global Limo, Inc.'s corporate charter two days after the Debtors filed the present case, the Defendants may have violated the automatic stay under 11 U.S.C. § 362(a)(4). At the time of filing, the shares of Global Limo, Inc. were in the Debtors' possession, and Mr. Maples was the beneficial owner of Global Limo, Inc.'s assets pursuant to Texas law. Mr. Partain canceled and reissued Global Limo, Inc.'s shares prior to the bankruptcy filing. Two days after the filing, Mr. Partain reinstated the corporate charter. In doing so he affected property of the

Estate through the significance the reinstatement had on the Debtors' beneficial ownership of the assets of Global Limo, Inc. Under the circumstances, the Court finds a reasonable probability of success on the merits.

2. With respect to immediate, irreparable injury, the Court finds that the diversion of property of the estate that is necessary for the continuation of the Applicants' business constitutes irreparable injury. Mr. Partain indicated at the hearing that he would immediately take possession of the buses if not prevented from doing so by order of the Court. Such action constitutes irreparable injury.

3. With respect to the comparative injuries to the Applicants and the Defendants, the Court finds that this further favors the Applicants. Mr. Maples is running the business, and the evidence suggests he is running the business well. The risk of injury therefore weighs in favor of granting the preliminary injunction to protect the Applicants and the creditors of the estate.

4. With respect to the public interest, the Court finds that the public interest is implicated in this matter through the overarching policy of protecting the rights established under the Bankruptcy Code. Specifically, other parties-in interest in the bankruptcy case must be protected. Here, Texas State Bank maintains an interest in the buses at issue. Texas State Bank's interest in the collateral should be protected as a matter of public interest.

5. In accordance with Bankruptcy Rule 7065, no bond is required by the Applicants.

6. This preliminary injunction expires on October 17, 2005, unless otherwise ordered.

7. It is ORDERED that:

i. The Defendants shall refrain from exercising control over any assets under the control of the Maples.

ii. The Defendants shall refrain from intercepting or redirecting mail directed to the Maples or Global Limo, Inc.

SIGNED 05/19/2005

/s/ Marvin Isgur
MARVIN ISGUR
United States Bankruptcy Court

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

IN RE:	§	
JAMES HOWARD MAPLES; fdba	§	CASE NO:
GLOBAL TOURS & CHARTERS, *et al*	§	05-70128
Debtor(s)	§	
	§	CHAPTER 11
JAMES HOWARD MAPLES, *et al*	§	
Plaintiff(s)	§	
VS.	§	
	§	ADVERSARY NO.
JOHNNY PARTAIN, *et al*	§	05-7009
Defendant(s)	§	

MOTION TO PRESERVE GLOBAL LIMO, INC. AND FOR JUDGE SCHMIDT AND JUDGE ISGAR TO CONFER AND DETERMINE RESPONSIBILITY TO GLOBAL AND PARTAIN

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 20 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGRE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE

HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

CREDITOR IS REQUESTING A TELEVIDEO HEARING FOR DECEMBER 1, 2005 at 2:00pm.

TO THE HONORABLE JUDGE OF THIS COURT:

1. COMES NOW JOHNNY PARTAIN, Creditor in the above styled and numbered cause and files his MOTION TO PRESERVE GLOBAL LIMO, INC. AND FOR JUDGE SCHMIDT AND JUDGE ISGAR TO CONFER AND DETERMINE RESPONSIBILITY TO GLOBAL AND PARTAIN. Creditor respectfully shows unto the court as follows:

2. On March 29, 2005 and on May 18, 2005 Judge Isgur transferred the assets of Global Limo, Inc., including bank accounts and buses, to James Maples and Kathleen Maples (Maples) through order of Temporary and Preliminary Injunction against Partain, the legal and equitable owner of Global Limo, Inc. (Global). The injunction did not preserve the status quo and the injunction gave Maples, a terminated employee of Global Limo, Inc., unrestricted access and ability to rape Global of all it's earnings and to further endanger people not realizing the depth of Maples inability to run a safe and legal business. Twenty-three people died as a result of Maples inabilities to conform to the law and fair dealings and the injunction against Partain has proved extremely damaging to Partain, Global Limo, Inc., and to the unsuspecting public.

3. To date, Global Limo, Inc. has lost it's authority to operate, has failed to publish it's tax reports, has failed to pay it's taxes to the state of Texas, has failed to maintain it's insurance, has been unable to save any money, and has

incurred millions of dollars in liabilities due to Maples' negligence while Maples' plundered the corporate assets and borrowed under the name of Global while in his bankruptcy. Maples has a poor history of business management, including failure to pay bills, failure to pay employees, failure to maintain insurance, failure to maintain buses, failure to conform to legal requirements to operate Global Limo, Inc through tags, registration, and taxes, failure to employ and document qualified employees, and failure to respond to orders of Judge Isgur's court to provide documentation of Global's operation to Partain. James Maples presence at Global Limo, Inc. is unjustified and is publicly, legally, and financially damaging to Global. Partain made multiple motions complaining of Maples' inability to conform to Bankruptcy rules, complaining of Maples' bankruptcy fraud, complaining of Maples' transfer of funds from Global, complaining of Debtor's failure to appear for the 341 hearing, and has made a motion to dismiss a post-petition agreement between Texas State Bank and Global which was denied because Global is not in bankruptcy. Partain also motioned to Judge Isgur for a $2,000,000 dollar bond to protect Global and Partain from the turnover of Global to Maples, motioned for affirmative relief to Judge Schmidt, motioned for contempt on complaints of Maples' failure to conform to Judge Isgurs' order to provide comprehensive weekly reports to Judge Isgur which Maples still does not provide, motioned for dismissal of Maples from Global to Judge Schmidt and to Judge Isgur, and motioned for appointment of another trustee to Global if necessary to Judge Schmidt. In short, Partain has done all he can do <u>in law</u> to protect and preserve his corporation, Global Limo, Inc. and to protect his family for the past nine month from Maples' bankruptcy. Partain is entitled to protection under the law, but neither court has responded which has led to catastrophic damages for Partain, Global, and the public.

4. Partain has been UNABLE TO ACHIEVE ANY RELIEF for his family or Global from the turnover of

Global to Maples or the seizure of Partain's and Global's property for two reasons. Primarily, Global never petitioned for bankruptcy so it is not considered to be under the jurisdiction of bankruptcy court and Judge Schmidt is unwilling to bring it under his jurisdiction regardless of actions by Judge Isgur to turnover Global to the Maples' bankruptcy estate. Second, Judge Isgur has been non-responsive to motions to protect Partain or Global from Maples' negligence and has in fact referred to Maples as the trustee of Global under the authority of Judge Schmidt which is a burden not recognized in Judge Schmidt's court. Since there is great respect in Judge Schmidt's court not to interpret or overturn the orders of another judge, Partain's complaints of abuses against Global and Partain falls between the cracks of both bankruptcy courts. Actions taken to seize property of Partain and Global without adequate protection to Partain and Global is, in law, a violation Partain's and Global's rights under the Fifth and Fourteenth Amendments to the United States Constitution and under 11 U.S.C.A. § 361. Such seizure of Global's and Partain's property is also without jurisdiction of the bankruptcy courts and these bankruptcy courts most probably do not have enough authority to correct their intrusion.

5. However as Judge Schmidt has pointed out, Partain has a great defense against lawsuits pursuant to the death of people through Global since it was the injunctive order against Partain that let Maples perpetrate the damages through Global. Insofar as such, Global also has an excellent defense that it was operating under the bankruptcy court's orders in disregard to Global's Directors even though the bankruptcy court was informed on May 16, 2005, that Maples had been operating dangerous vehicles and that people may die. Judge Isgur argued that Maples has equitable interest to Global, possibly through bankruptcy avoidance laws, and that Texas State Bank needed to be paid. Texas State Bank's and Global's business is no concern of the courts and bankruptcy laws do

not create property rights. *Pennsylvania Dep't of Pub. Welfare v. Davenport, 495 U.S. 552 (1990) (Bankruptcy has no substantive effect on state law cases in that it neither extinguishes a debt nor creates rights in the debtor); Kelly v. Borough of Sayreville, 107 F 3d.1073, 1077 (3d Cir.1997)("State law creates the property rights protected by the fourteenth amendment"); 28 U.S.C. Sec. 1738, ("[t]he records and judicial proceedings of any court of any . . . state. . . shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of such State . . . from which they are taken"*). Further, Partain has a pre-existing judgment for FRAUD against Maples' which is non-dischargeable and has already been produced in the answer and counter-suits in Judge Isgur's court making any avoidance of Partain's ownership in Global highly improbable. Partain and Global require immediate lawful and equitable relief from seizure of their property just to mitigate the extreme damages incurred through turnover of property and subsequent inactions by these courts.

6. Inaction by these bankruptcy courts amounts to nothing less than these courts condoning and protecting Maples' fraud, theft, and negligence (death) since both bankruptcy courts have had sufficient facts and arguments timely provided to them to act otherwise; these are not the actions of courts in equity. The circumstances surrounding Maples' bankruptcy have created embarrassing problems for the courts and have created critical issues and problems which required immediate attention months ago. Partain nor these courts have the authority or the power to give back the lives lost to victims of Maples' negligence, but Partain can still mitigate his and Global's damages through the following: Partain arranged competent management for Global months ago. There is $104,000 dollars due from Fema and there is at least $30,000 in a lockbox account with Texas State Bank. Additionally, the touring season is just starting although Global can't provide service. These bankruptcy courts are not empowered to overrule the

Federal Motor Carrier Safety Administration to allow Global to operate nor to shape the public's opinion to bring back customers, but Partain is not a party to Maples' negligence and in fact tried to prevent damages through Maples negligence in these courts. Partain can provide an excellent argument and foundation to reinstate Global's authority to operate and to clean the filth that has tarnished Global. In fact, Global and Partain probably are protected against catastrophic losses through lawsuits by the very court orders seizing Global and turning it over to Maples.

7. Maples ruined Global financially by paying himself extravagant compensations (Maples has no salary being a terminated employee) which precluded expenditures on maintenance and to employees. Maples did not pay debts because he was in bankruptcy, yet Maples was still unable to generate enough money for maintenance and insurance expenditures. Although there have been no reported profits for recent months, Maples payed himself $11,000 in the past 30 days. History shows that if Maples is allowed access to the remaining monies owed to Global, Global will not survive and Partain and Global will have been wrongly deprived of rights and property without recourse in these courts.

8. WHEREFORE PREMISES CONSIDERED, Johnny Partain prays Judge Schmidt and Judge Isgur immediately confer on the facts and laws pursuant to Maples' bankruptcy and pursuant to Maples' control of Global and that a plan is timely produced to protect and provide relief in emergency hearing to Global Limo, Inc. and to Johnny Partain. Johnny Partain prays for all other relief in law and equity he may be entitled.

Respectfully Submitted,

/s/Johnny Partain
JOHNNY PARTAIN

7020 N 16th Street
McAllen, Texas 78504
956-687-4966 or 956-240-1821

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

IN RE:	§	
JAMES HOWARD MAPLES; fdba	§	CASE NO:
GLOBAL TOURS & CHARTERS, *et al*	§	05-70128
Debtor(s)	§	
	§	CHAPTER 11
JAMES HOWARD MAPLES, *et al*	§	
Plaintiff(s)	§	
VS.	§	
	§	ADVERSARY NO.
JOHNNY PARTAIN, *et al*	§	05-7009
Defendant(s)	§	

MOTION FOR EMERGENCY HEARING AND RESPONSE TO PROTECT GLOBAL LIMO, INC. AND JOHNNY PARTAIN

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 20 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

CREDITOR IS REQUESTING A TELEVIDEO HEARING FOR DECEMBER 1, 2005 at 2:00pm.

TO THE HONORABLE JUDGE OF THIS COURT

COMES NOW JOHNNY PARTAIN, Counter-Defendant in the above styled and numbered cause and files his *MOTION FOR EMERGENCY HEARING AND RESPONSE TO PROTECT GLOBAL LIMO, INC. AND JOHNNY PARTAIN*, and in support thereof shows the court as follows:

Global Limo, Inc. (Global) was turned over to James Maples and Kathleen Maples (Maples) pending a trial for a frivolous permanent injunction to prevent Johnny Partain (Partain) from operating his corporation. Johnny Partain is the legal and equitable owner of Global and Maples is a terminated employee. Maples has failed to maintain the legal and financial well-being of Global and has caused Global to become insolvent and embroiled in crippling litigation. Maples has demonstrated poor business management, including failure to pay bills, failure to pay employees, failure to maintain insurance, failure to maintain buses, failure to conform to legal requirements to operate Global Limo, Inc through tags, registration, and taxes, failure to employ and document qualified employees, and failure to respond to orders of this court to provide documentation of Global's operation to Partain. James Maples presence at Global Limo, Inc. is unjustified and is publicly, legally, and financially damaging to Global. Any slim chance remaining that Global has to recover from the damages incurred through James Maples requires the immediate removal of Maples. An emergency hearing is required because Maples' failures has caused the death of at least 23 people and may immediately cause further damage or deaths, or Global will not be able to operate and will be forced out of business. Further, there are a limited amount of assets available to restart business if business can be restarted and Maples' history proves that he cannot be entrusted with the assets, especially cash, if Global is to survive.

WHEREFORE PREMISES CONSIDERED, Johnny Partain prays the court orders an emergency hearing through televideo conference at the Bentson Building, Bankruptcy Court, 9th Floor Courtroom, 1701 W. Highway 83, McAllen, Texas on December 1, 2005, or earlier. Johnny Partain prays that the court responds to his *MOTION TO PRESERVE GLOBAL LIMO, INC. AND FOR JUDGE SCHMIDT AND JUDGE ISGAR TO CONFER AND DETERMINE RESPONSIBILITY TO GLOBAL AND PARTAIN* and is prepared with a plan to protect Global and Partain from Maples. Johnny Partain prays the court restricts notice of *MOTION TO PRESERVE GLOBAL LIMO, INC. AND FOR JUDGE SCHMIDT AND JUDGE ISGAR TO CONFER AND DETERMINE RESPONSIBILITY TO GLOBAL AND PARTAIN* and *MOTION FOR EMERGENCY HEARING AND RESPONSE TO PROTECT GLOBAL LIMO, INC. AND JOHNNY PARTAIN* to the litigants immediately involved in this conflict and as found in the certificate of service below. Johnny Partain prays for all equitable and lawful relief he may be entitled.

/s/Johnny Partain
JOHNNY PARTAIN
7020 N 16th Street
McAllen, Texas 78504
956-687-4966 or 956-240-1821

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

IN RE:	§	
JAMES HOWARD MAPLES; fdba	§	CASE NO:
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Debtor(s)	§	
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Plaintiff(s)	§	
VS.	§	
	§	ADVERSARY NO.
JOHNNY PARTAIN, *et al*	§	05-7009
Defendant(s)	§	

MEMORANDUM OPINION ON SUMMARY JUDGMENT

On December 20, 2005, a hearing was held on the parties' cross motions for summary judgment. For the reasons set forth below, the Plaintiff's Motion Summary Judgment [docket no. 158] is granted in part and denied in part. Texas State Bank's Motion for Summary Judgment is granted [docket no. 155]. The transfers received by the Partains are avoided. Defendant's Motion for Summary Judgment [docket no. 161] is denied.

Summary Judgment Standard

"A motion for summary judgment is proper only if there is no genuine issue as to any material fact and themoving party is entitled to judgment as a matter of law." *Pluet v. Frazier*, 355 F.3d 381, 383 (5th Cir. 2004). The party seeking summary judgment bears the initial burden of informing the court of the basis for its motion and identifying those portions of the pleadings and evidence that it believes demonstrate the absence of a genuine issue of material fact. *Norman v. Apache Corp.*, 19 F.3d 1017, 1023 (5th Cir 1994). Material issues are those that could affect the outcome of the action. *Wyatt v. Hunt Plywood, Co. Inc.*, 297 F.3d 405, 409 (5th Cir. 2002). Upon an adequate showing in a motion for summary judgment, the burden

shifts to the non-moving party to establish a genuine issue of material fact.

Maldonado-Denis v. Castillo-Rodriguez, 23 F.3d 576, 581 (1st Cir. 1994). The court then views the facts in the light most favorable to the non-moving party. *St. David's Health Care Sys. v. United States*, 349 F.3d 232, 234 (5th Cir. 2003) (citing *Wyatt*, 297 F.3d at 409).

Preference

The fundamental issue that gives rise to this dispute is whether the pre-petition transfers obtained by the Partains in a judgment issued by the Hidalgo County Court at Law No. 1 constitutes an avoidable pre-petition transfer.

Section 547(b) of the Bankruptcy Code provides,[1] in relevant part:

(b) Except as provided in subsection (c) of this section, the trustee may avoid any transfer or an interest of the debtor in property-

(1) to or for the benefit of a creditor;

(2) for or on account of an antecedent debt owed by the debtor before such transfer was made;

(3) made while the debtor was insolvent;

(4) made-

(A) on or within 90 days before the date of the filing of the petition; or

(B) the transfer had not been made; and

(C) such creditor received payment of such debt to the extent provided by the provisions of this title.

While many of the facts, issues and motives surrounding this case are seriously contested, the following facts are undisputed:

1. The Maples filed chapter 11 bankruptcy on February 16, 2005.

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[1] All references tot the Bankruptcy Code are to Title 11 of the United States Code as it existed on the date of the commencement of this proceeding. Subsequent amendments are not applicable to this lawsuit.

2. The Partains hold a judgment against the Maples. The judgment (as finally amended) was issued by the Hidalgo County Court on February 27, 2003.
3. On January 27, 2005, the Hidalgo County Court ordered that certain of the Maples' assets were transferred to the Partains to satisfy, in part, the Partains' judgment.
4. January 27, 2005 is within the 90-day preference period set forth in § 547(b)(4)(A).

Section 547(b)(1) requires that a transfer be to or for the benefit of a creditor. Based on the foregoing undisputed facts, the Court finds that the January 27, 2005 transfers were made to or for the benefit of the Partains.

Section 547(b)(3) requires that the transfer be made at a time when the debtor was insolvent. Section 547(f) provides a rebuttable presumption of insolvency in the 90-day period preceding the date of the filing of the petition. Once the presumption of insolvency applies, the burden is on the respondent to prove that the debtor was solvent on the date of the transfer. *In re Ramba, Inc.*, 416 F.3d 394, 403 (5th Cir. 2005). Mr. Partain argued that the various claims and debts listed in the Debtors schedules are inaccurate or unmatured as of the petition date, and are therefore not liabilities that should be considered in determining the Debtor's solvency. The Partain have presented no evidence to support these contentions.[2] Instead, Mr. Partain incorrectly argued that the initial burden of proof was on the Debtor to prove it was insolvent. Simply alledging that the Debtors' valuations are inaccurate is insufficient. The Partains have not offered any summary judgment evidence to rebut the presumption of insolvency. Section 547(f) provides a presumption of

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[2] When asked by the Court what the Partains believed the value of the Debtor to be, Mr. Partain responded that he could not ascribe a value because he only had the records and values provided by the Debtor before him.

insolvency. This Court would not be implementing the statute if it ignored that presumption and required the Debtors to offer proof of insolvency at a summary judgment hearing. The Partains declined to offer proof in this area; they fail to meet their summary judgment burden. Because the Partains failed to meet their burden of proof, the Court finds that the debtor was insolvent on January 278, 2005.

Section 547(b)(4)(a) requires that the transfer be made within 90-days of the filing of the petition if the transfer is to a non-insider. The January 27, 2005 transfer was made within 90-days of the filing of the petition, and the transfer was made to a non-insider.

Section 547(b)(5) requires that the creditor received more than the creditor would receive in a hypothetical liquidation under chapter 7 of the Bankruptcy Code. In determining whether to grant a summary judgment, Federal Rule of Bankruptcy Procedure 7056(c) requires the Court to reach its decision based on the "pleadings, depositions, answers to interrogatories, and admissions on file together with the affidavits." FED. R. Bankr. P 7056(c). The Maples have included persuasive evidence – unrebutted by the Partains – that the Maples assets are highly unlikely to produce a 100% distribution to creditors. The Maples' schedules reflect that their debts far exceed their assets. The recently filed disclosure statement shows far fewer assets than total claims. A transfer to an unsecured creditor provides that creditor more than would be received in a hypothetical chapter 7 if the case will not make a full distribution to all creditors. *In re Powerine Oil Co.*, 59 F.3d 969, 972 (5th Cir. 1995). Such is the case here. Accordingly, the Court finds that all elements of § 547(b) have been satisfied.

Nevertheless, a recipient of a transfer of the type described in § 547(c). Section 547(c) reads as follows:

(c) The trustee may not avoid under this section a transfer—

(1) to the extent that such transfer was—

(A) intended by the debtor and the creditor to or for whose benefit such transfer was made to be a contemporaneous exchange for new value given to the debtor; and

(B) in fact a substantially contemporaneous exchange;

(2) to the extent that such transfer was—

(A) in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee;

(B) made in the ordinary course of business or financial affairs of the debtor and the transferee; and

(C) made according to ordinary business terms;

(3) that creates a security interest in property acquired by the debtor—

(A) to the extent such security interest secures new value that was—

(i) given at or after the signing of a security agreement that contains a description of such property as collateral;

(ii) given by or on behalf of the secured party under such agreement;

(iii) given to enable the debtor to acquire such property; and

(iv) in fact used by the debtor to acquire such property; and

(B) that is perfected on or before 20 days after the debtor receives possession of such property;

(4) to or for the benefit of a creditor, to the extent that, after such transfer, such creditor gave new value to or for the benefit of the debtor—

(A) not secured by an otherwise unavoidable security interest; and

(B) on account of which new value the debtor did not make an otherwise unavoidable transfer to or for the benefit of such creditor;

(5) that creates a perfected security interest in inventory or a receivable or the proceeds of either, except to the extent that the aggregate of all such transfers to the transferee caused a reduction, as of the date of the filing of the petition and to the prejudice of other creditors holding unsecured claims, of any amount by which the debt secured by such security interest exceeded the value of all security interests for such debt on the later of—

(A)

(i) with respect to a transfer to which subsection (b)(4)(A) of this section applies, 90 days before the date of the filing of the petition; or

(ii) with respect to a transfer to which subsection (b)(4)(B) of this section applies, one year before the date of the filing of the petition; or

(B) the date on which new value was first given under the security agreement creating such security interest;

(6) that is the fixing of a statutory lien that is not avoidable under section 545 of this title;

(7) to the extent such transfer was a bona fide payment of a debt to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property

settlement agreement, but no to the extent that such debt---

(A) is assigned to another entity, voluntarily, by operation of law, or otherwise; or

(B) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support; or

(8) if, in a case filed by an individual debtor whose debts are primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than $600.

Subsection 547(c)(2) provides a defense for certain contemporaneous exchanges of value. However, the payment of a debt does not constitute a contemporaneous exchange for value under § 547(c)(1). See §547(a)(2). *See, e.g., In re Inv. Bankers, Inc.* 136 B.R. 10088, 1021 (Banker. D. Colo. 1989)("if payment is received after the debt is incurred, this is payment of an antecedent debt).

Section 547(c)(2) provides a defense for certain payments made in the ordinary course of business. The circumstances surrounding this transfer are not in question. The transfer occurred pursuant to a court order to satisfy a judgment. It was not made in the ordinary course of business.

Section 547(c)(3) provides a defense with respect to the creation of a security interest for new value. There was security interest here and there was no new value. The defense fails.

Section 547(c)(4) provides a defense if the recipient provided new value back to the debtor after the date of the transfer. No such new value was provided here. This defense fails.

Section 547(c)(6) provides a defense for the fixing of a statutory lien. A statutory lien arises "solely by force of a statute on specified circumstances or conditions" and does not include a judicial lien. 11 U.S.C. § 101(53). No statutory lien was created in the transaction. Accordingly, this defense fails.

Section 547(c)(8) is limited to transfers of less than $600. This defense is not relevant here.

Because all of the potential defenses are inapplicable to the facts before the Court, the Court finds that the transfers made or contemplated by the January 27, 2005 turnover order are avoided.

Determination of Dischargeability

The Partains seek a determination that the debt owed to the Partains is nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A), (2)(B), (4), (6), (7) and (11). Exceptions to discharge must be strictly construed against the objecting creditor and liberally in favor of the debtor. *In re Davis, 194* F.3d 570, 573 (5th Cir. 1999); *In re Boyle,* 819 F.2d 583, 588 (5th Cir. 1987).

Section § 523(a)(2) provides an exception to discharge for any debt:

> (2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained, by---
>
> > (A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition; [or]
> >
> > (B) use of a statement in writing---
> >
> > > (i) that is materially false;
> > >
> > > (ii) respecting the debtor's or an insider's financial condition;
> > >
> > > (iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and

> (iv) that the debtor caused to be made or published with intent to deceive;...

11 U.S.C. §(a)(2). For a debt to be nondischargeable under § 523(a)(2), it must be shown that either: (1)money, property or services, or an extension, renewal or refinancing of credit was obtained by false pretenses. A false representation, or actual fraud; or (2) the debt was obtained by the use of a false financial statement. 11 U.S.C. § 523(a)(2).

The Partains argue that the Maples fraudulently created Global Limo, Inc. and engaged in a scheme to transfer or encumber assets to prevent the Partains from collecting the Hidalgo County Court judgment which established Mr. Maples' wrongful conduct. It is undisputed that the Hidalgo County Court judgment was based on a finding of fraud. The preclusive effect of a state court judgment in a subsequent federal case is determined by reference to state law. *In re Schwager*, 121 F.3d 177, 181 (5th Cir. 1997). Under Texas law, collateral estoppel requires that: (1) the facts sought to be litigated in the second were fully and fairly litigated in the prior action; (2) those facts were essential to the judgment in the first action; and (3) the parties were cast as adversaries in the first action. *Id.* While the Hidalgo County Court judgment may preclude the parties from relitigating the issue of Mr. Maples' fraudulent conduct, neither party has submitted any findings of fact or conclusion of law from the Hidalgo County Court action. It is unclear whether money, property or services, or any type of credit was obtained by Mr. Maples' fraudulent conduct, or whether the fraudulent conduct related to a false financial statement. Plaintiff has not established the absence of a genuine issue of material fact with respect to each element under § 523(a)(2)(A) or (B). Accordingly, a fact issue remains and summary judgment is denied.

Section § 523(a)(6) provides an exception to discharge for any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity." 11 U.S.C. § 523(a)(6). To fall within this exception, the debt must arise from injury to an entity or property that is both willful and malicious. *Id.*; *In re Holt*, 310 B.R. 675, 678 (Bankr. N.D. Tex. 2004). A willful injury requires a deliberate or intentional injury; a deliberate or intentional act that results in injury is not sufficient. *Kawaauhau v. Geiger*, 523 U.S. 57, 61 (1998). Malicious means without just cause or excuse. *In re Garner*, 56 F.3d 677, 681 (5th Cir. 1995).

The Partains allege that the Maples' wrongful conduct in creating Global Limo, Inc. and transferring or encumbering assets to prevent the Partains from collecting the Hidalgo County Court judgment support a determination that the debt should be excepted from discharge under 523(a)(6). The Maples disagree. The circumstances surrounding the Maples' purchase of the ranch are unclear. There is no evidence before this Court that the Hidalgo County Court judgment was based on a finding that Mr. Maples' willfully and maliciously injured the Partains. It is unclear whether these issues were actually litigated in the state court action, and if so, whether they were essential to the judgment. Accordingly, a genuine issue of fact remains. Summary judgment is denied.

Section § 523(a)(4) provides an exception to discharge for any debt "fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny." 11 U.S.C. § 523(a)(4). The creditor bears the burden of proving that the debt falls within the § 523(a)(4) exception. *In re Nicholas*, 956 F.2d 110, 114 (5th Cir. 1992). To prevail under § 523(a)(4), the Partains must establish a fiduciary relationship. To qualify as "fiduciary" for debt dischargeability purposes, duties must have existed prior to, rather than by virtue of, any claimed misappropriation or wrong. *In re Tran*, 151 F.3d 339, 342 (5th Cir. 1998). The Partains' sole claim of ownership of Global limo arises out of the transfers made

pursuant to the January 27, 2005, Hidalgo County Court judgment. All of these transfer are avoided. Accordingly, the Partain have no standing, and the § 523(a)(4) claims is dismissed.

Section § 523(a)(7) provides an exception to discharge for certain fines, penaltics, or forfeitures that are payable to and for the benefit of governmental unit. 11 U.S.C. § 523(a)(7). It is undisputed that the debt at issue in this proceeding arose pursuant to the Hidalgo County Court judgment and that the debt is owed to the Partains, two individual. Accordingly, this provision is not relevant and summary judgment is granted in favor of the Debtors.

Section § 523(a)(11) provides an exception to discharge for any debt resulting from certain judgments, orders or settlement agreements when the debts arose "from any act of fraud or defalcation while acting in a fiduciary capacity committed with respect to any depository institution or insured credit union." 11 U.S.C. § 523(a)(11). The Partain have presented no evidence that the debt at issue arose from fraud or defalcation committed by the Maples while they were acting in a fiduciary capacity with respect to a depository institution or insured credit union. Accordingly, this provision is not relevant and summary judgment is granted in favor of the Debtors.

Objection to Discharge

The Partain argue for the disallowance of Debtor's discharge under 11 U.S.C. § 727(a)(7). Section 727(a) states, in relevant part:

The court shall grant the debtor a discharge, unless---

(7) the debtor has committed any act specified in paragraph (2), (3),(4), (5), or (6) of this subsection, on or within one year before the date of the filing of the petition, or during the case, in connection with another case under this title or under the Bankruptcy Act, concerning an insider, ... 11 U.S.C. § 727(a).

Section 727(a)(7) extends the basis for denial of discharge to a debtor's misconduct in connection with bankruptcy of an insider. *In re Krehl,* 86 F.3d 737, 744 97th Cir. 1996); *In re Powell,* 88 B.R. 114, 117 (Bankr. W.D. Tex. 1988). The purpose of § 727(a)(7) is to bind "related cases together so that misconduct in one case by an individual may be chargeable against that individual in other related proceedings." *Whiteside F.S. Inc. v. Siefkin*, 46 B.R. 479, 480-81 (Bankr. D.C. Ill. 1985). The Partain have not presented any evidence of any related bankruptcy proceedings filed by an insider. Accordingly, § 727(a)(7) is inapplicable. Partial summary judgment is granted in favor of the Maples with respect to the § 727(a)(7) cause of action.

Claims by Partains

The Partains assert numerous theories of recovery.[3] For the purpose of completeness, the Court addresses each claim separately.

Fraud, Constructive Fraud and Fraudulent Transfers

The claims allege that Maples made transfers that diminished the size of his estate in order to stop the Partains from collecting amounts owed to them. The Partains seek recovery both from Maples and from the alleged recipients of the transfers, primarily Texas State Bank. Claims that allege that the size of the estate has diminished are property of the estate. *See In re Educators Group Health Trust*, 25 F.3d 1281, 1284 (5th Cir.1994). The remedy for such claims is to pay money into the estate for an equitable distribution to all creditor – not just the Partains. The Fifth Circuit has repeatedly held that such

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[3] The Partains also claim that Maples is unable to prove entitlement to a preliminary injunction. This appears to be an attempt by Partains to re-litigate the issues previously adjudicated by the Court's May 19, 2005 order granting a preliminary injunction. This issue is not properly before the Court as no motion to reconsider or request for injunctive relief is presently pending before this Court.

claims may be asserted only by the estate's fiduciaries. *See In re Mortgage America Corp.*, 714 F.2d 1266, 1272 (5th Cir. 1983). Neither of the Partains is an estate fiduciary. Accordingly, they have no standing to bring these claims. They must be dismissed for want of standing.

Conversion

This claim is asserted on behalf of Global Limo, Inc. The Partains allege that Global Limo's assets were converted by Texas State Bank and the Maples. The Partains' sole claim of ownership of Global Limo arises out of the transfers made pursuant to the January 27, 2005 Hidalgo County Court judgment. Because all of those transfers are avoided, the Partains may not assert claims on behalf of Global Limo.

Intentional Interference with the Right to Pursue a Lawful Business

This claim is also asserted on behalf of Global Limo, Inc. The Partains allege that Global Limo's assets were converted by Texas State Bank and the Maples which interfered with the Partains' ability to effectively operate the business. The Partains' sole claim of ownership of Global Limo arises out of the transfers made pursuant to the January 27, 2005 Hidalgo county Court judgment. Because all of those transfers are avoided, the Partains may not assert claims on behalf of Global Limo.

Negligence and Gross Negligence

These claims originate in two principal ways.

First, the Partains claim that Texas State Bank intentionally created a conflict of interest with the Partains' attorneys on or about January 29, 2002. Texas State Bank offers the affidavits of its agents that it was not engaged in any alleged conflict. Texas State Bank also offers summary judgment evidence in the form of a judgment against Mr. Partain and in favor of his counsel on this same issue. Mr. Partain offers no competent summary judgment evidence in

support of this allegation. Texas State Bank is entitled to summary judgment on this issue.

Second, the Partains claim negligence with respect to the handling of Global Limo's affairs and b assisting in the hiding and conversion of assets. For reason set forth above, the Partains have no standing to bring any of these claims.

Attorneys Fees

The Partains have not prevailed on any issue. They are not entitled to attorneys fees.

Conclusion

The transfers received by the Partain pursuant to the Hidalgo County Court judgment and orders are avoided. Texas State Bank's motion for summary judgment is granted. The Maples' motion summary judgment is granted in part and denied in part. The Partains' motion for summary judgment is denied. Trial will be limited to the issue of whether the debt owed to the Partains is nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A), (2)(B), or (6). Trial will begin at 9:00a.m. on April 18, 2006 at the United States Bankruptcy Court, McAllen, Texas. All other relief is denied.

Signed at Houston, Texas, on January 26, 2006.

/s/ Marvin Isgur
Marvin Isgur
United State Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

IN RE:	§	
JAMES HOWARD MAPLES; fdba	§	CASE NO:
GLOBAL TOURS & CHARTERS, *et al*	§	05-70128
Debtor(s)	§	
	§	CHAPTER 11
JAMES HOWARD MAPLES, *et al*	§	
Plaintiff(s)	§	
VS.	§	
	§	ADVERSARY NO.
JOHNNY PARTAIN, *et al*	§	05-7009
Defendant(s)	§	

JUDGMENT

On January 26, 2006, this Court issued its Memorandum Opinion on Summary Judgment. All remaining issues were tried on April 18, 2006. Pursuant to Fed. R. Bankr. P. 7052, the Court issued oral findings at the conclusion of the April 18, 2006 hearing. Based on the oral findings made on this date and the findings made in the Memorandum Opinion, the Court now issues the following judgment:

1. The Partain's Third Amended Judgment issued by the Hidalgo County Court at Law #1 in case CL 29,530-A is excepted from any discharge that may be granted in favor of James H. Maples in his bankruptcy case.
2. All transfers made to, by, or at the direction of the Partain's or the Hidalgo County Court at Law #1 in connection with case CL 29,530-A are avoided. Without limiting the generality of the foregoing, title to the following assets is hereby vested in the Maples Bankruptcy Estate, subject to all security agreements (as that term is defined in § 101 of the Bankruptcy Code) that existed as of the date of the petition:
    a) 100% of all interests in Global Limo and its assets, whether such interests are in the form of stock or other forms of ownership.

b) The East 18.41 feet of the West 60.82 feet of Lot 37, El Cazador Subdivision, Unit No. 2, an Addition to the City of McAllen, Hidalgo County, Texas, according to map thereof recorded in volume 19, page 58 of the Map Records of Hidalgo County.

c) All of that certain tract or parcel of land situated in Marvel Holbert Survey, Abstract No. 240 and the William Turley Survey, Abstract No. 478, Franklin County, Texas; being a part of that certain Tract Two–122.030 acres described in Deed to Betty L. Peterman, dated 1987, recorded in Volume 205, Page 573, Deed Records of Franklin County, Texas.

3. Any *lis pendens* or other cloud on ownership of the assets identified in paragraph 2 of this judgment is vacated.

4. Any funds held by Texas State Bank in suspense on account of prior orders issued in this adversary proceeding are no longer required to be suspended and may be applied in accordance with applicable law.

5. All claims against Texas State Bank for fraud, constructive fraud, receipt of fraudulent transfers, conversion, or intentional interference with the right to pursue a lawful business are dismissed for want of standing.

6. The Partains, and all persons working in concert with them, are permanently enjoined from asserting any rights or control over any assets of the Maples or the Maples Bankruptcy Estate (including without limitation any assets that are the subject of paragraph 2 of this judgment), except as follows:

a) The Partains may exercise any rights granted to them by an order issued by the United States Bankruptcy Court for the Southern District of Texas or the United States District Court for the

Southern District of Texas if such order is issued after the date of this judgment.

b) The Partains may exercise collection rights on the judgment described in paragraph 1 of this judgment, but only to the extent that such exercise is (i) authorized by § 362 (c)(1) of the Bankruptcy Code; and (ii) against property that has not been exempted under § 522 of the Bankruptcy Code.

7. All other claims against Texas State Bank are denied.
8. Costs are awarded to Texas State Bank against the Partains.
9. All costs incurred by the Partains are borne by the Partains.
10. All costs incurred by the Maples are borne by the Maples.
11. The Court notes the pending notice that Mr. Partain has acted in violation of the injunction previously issued by this Court. The Court expresses no view on the merits of the allegations. This judgment does not address the merits of the allegation. The Court has continuing jurisdiction to enforce its own orders and judgments.
12. All other relief which was sought in the complaints in this adversary proceeding is denied.

Signed at Houston, Texas, on April 27, 2006.

/s/ Marvin Isgur
Marvin Isgur
United State Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

IN RE:	§	
JAMES HOWARD MAPLES; fdba	§	CASE NO:
GLOBAL TOURS & CHARTERS, *et al*	§	05-70128
Debtor(s)	§	
	§	CHAPTER 11
JAMES HOWARD MAPLES, *et al*	§	
Plaintiff(s)	§	
VS.	§	
	§	ADVERSARY NO.
JOHNNY PARTAIN, *et al*	§	05-7009
Defendant(s)	§	

ORDER DENYING PARTAIN'S MOTION TO DISQUALIFY

On April 25, 2006, Johnny Partain filed a motion to disqualify the judge [docket no. 223]. For the reasons stated below, the motion is denied.

Background

This adversary proceeding was filed on March 28, 2005. The complaint sought injunctive relief and alleged violations under 11 U.S.C. § 362. On May 19, 2005, the Court granted a preliminary injunction, finding that the Partains violated § 362 by exercising rights under a state court turnover order to take possession of property in the Maples' possession and that the Maples' business, Global Limo Inc., would be further harmed absent such order. On June 20, 2005, Partain filed an amended counterclaim, alleging causes of action for conversion, intentional interference with the right to pursue a lawful business, and negligence based on Partain's contention that he owned Global Limo via the state court turnover order. Partain further asserted a claim based on fraud and sought a determination that the state court judgment was nondischargeable under § 523. Partain also filed a third party complaint against Texas State Bank, alleging the same causes of action. On October 4, 2005, the Maples filed

an amended complaint. The amended complaint incorporated the original claims and sought a determination that any interest Partain obtained in property of Global Limo pursuant to the state court turnover order was voidable as a preferential transfer pursuant to § 547.

On January 26, 2006, the Court issued a memorandum opinion on summary judgment. The Court granted the Maples' motion for summary judgment in part, finding that the transfers made or contemplated by the state court turnover order were avoided under § 547 and that Partain lacked standing to bring claims based on conversion and intentional interference with the right to pursue a lawful business. The Court also granted Texas State Bank's motion for summary judgment, finding that that Partain lacked standing. The issue of whether the debt owed by Maples to Partain was non-dischargeable survived summary judgment.

On April 18, 2006, the Court held a trial on the limited issue of whether the debt owed to the Partains was nondischargeable pursuant to § 523(a)(2)(A), (2)B), or (6). At the conclusion of the hearing, the Court ruled that the Partains' state court money judgment was excepted from discharge.[1]

On April 19, 2006, Partain filed a motion to disqualify the judge in this case. Partain raises various arguments in support of his motion. The majority of Partain's claims are based on Partain's disagreement with the Court's rulings. First, Partain alleges that the Court wrongfully declined to rule whether Global Limo, Inc. is a corporation. Partain further alleges that that the Court has acted hastily to dispose of this adversary proceeding. Finally, Partain alleges that the Court improperly dismissed various claims and has taken the position that the Court's duty is to protect the debtor.

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[1] A final judgment incorporating the Court's findings in this adversary proceeding was issued on April 27, 2006.

Analysis

Pursuant to 28 U.S.C. § 455, a party may request the recusal of a judge. Recusal is required whenever a judge's "impartiality might reasonably be questioned." 28 U.S.C. § 455(a). Recusal is also appropriate when a judge has personal knowledge or bias or when a conflict of interest exists. *Id.* at § 455(b).

Partain's motion alleges bias based on of the Court's rulings and case administration. When reviewing allegations of bias, the Court should utilize an objective observer's standard and consider the entire course of the judicial proceedings. *Andrade v. Chojnacki*, 338 F.3d 448, 454- 55 (5th Cir. 2003). The review should focus on the source of a judge's alleged bias. *Id.* at 455. To prevail on such a motion, the movant must demonstrate that the alleged comment, action or circumstance was of "extrajudicial" origin. *Id.*

As the Supreme Court explained:

First, judicial rulings alone almost never constitute a valid basis for a bias or partiality motion. In and of themselves (i.e., apart from surrounding comments or accompanying opinion), they cannot possibly show reliance upon an extrajudicial source; and can only in the rarest circumstances evidence the degree of favoritism or antagonism required (as discussed below) when no extrajudicial source is involved. Almost invariably, they are proper grounds for appeal, not for recusal. Second, opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible. Thus, judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge. They may do so if they reveal an opinion that derives from an extrajudicial

source; and they will do so if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible....Not establishing bias or partiality, however, are expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women, even after having been confirmed as federal judges, sometimes display. A judge's ordinary efforts at courtroom administration—even a stern and short-tempered judge's ordinary efforts at courtroom administration— remain immune. *Litekey v. United States*, 510 U.S. 540, 555-56 (1994).

The substance of Partain's motion argues that the Court's ruling were incorrect. First, Partain argues that the Court improperly refused to define the status of Global Limo, and by failing to do so caused unnecessary confusion in this case. When asked, the Court did decline to address Partain's questions concerning Global Limo, a company owned by Maples. In doing so, the Court declined to issue an advisory opinion on the matter. Global Limo is neither a Debtor nor a party in interest before this Court. The Court has addressed the status of the transferred interest in Global Limo in numerous Court orders and determined that the transfer of the stock from Maples to Partain was a preferential transfer under bankruptcy law. Partain further alleges that that the Court has acted hastily to dispose of this adversary proceeding[2] and improperly denied Partain's motion for summary judgment.[3] Partain's dissatisfaction with the Court's rulings, by itself, does not give rise to a finding of bias or partiality. Partain has not cited any extrajudicial source of bias or partiality or demonstrated

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[2] This adversary proceeding was filed on March 28, 2005. The final judgment was issued on April 27, 2006.

[3] Partain argues that he was entitled to summary judgment on his claims for breach of fiduciary duty since no response was filed. However, Partain's motion for summary judgment was untimely. The deadline to file dispositive motions was November 7, 2005, and Partain's motion was not filed until November 14, 2005.

that the Court harbors a deep-seated favoritism or antagonism that would make fair judgment impossible.

Partain also alleges that the Court has taken the position that the Court's duty is to protect the debtor, James Maples, because he is in bankruptcy. Although the Court ordered Partain to file a supplement to his motion directing the Court to a specific citation in the record where such alleged statements were made, none was filed. The record in this case is lengthy and the Court is unable to locate any such statement.

Conclusion

Disqualification is not appropriate in this case. Partain's allegations reflect his dissatisfaction with the Court's rulings. No facts or evidence were offered to suggest that the Court's actions or comments in this case were of extrajudicial origin or in a manner to make fair judgment impossible.

Signed at Houston, Texas, on June 12, 2006.

/s/ Marvin Isgur
Marvin Isgur
United State Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

IN RE:	§	
JAMES HOWARD MAPLES; fdba	§	CASE NO:
GLOBAL TOURS & CHARTERS,	§	05-70128
VIRGINIA KATHLEEN MAPLES	§	
Debtor(s)	§	CHAPTER 11

DEBTORS' SECOND AMENDED PLAN OF REORGANIZATION

JAMES H. MAPLES and VIRGINIA KATHLEEN MAPLES, debtors and debtors in possession, propose the following plan of reorganization pursuant to chapter 1 1 of the Bankruptcy Code.

ARTICLE 1. DEFINITIONS

For the purposes of this Plan, the following terms shall have the meanings specified below. Any term used in the Plan that is not defined herein, but that is defined in the Code or Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules.

1.1. "Administrative Claim" means any Claim, including but not limited to claims for compensation of professionals made pursuant to section 330 of the Code, entitled to be treated as a Priority Claim under section 5 07(a)(1) of the Code.

1.2. "Allowed Administrative Claim" means an Administrative Claim that is an Allowed Claim.

1.3 "Allowed Claim" means any Claim in the amount and classification set forth in a proof of claim filed with the Court within the time fixed by the Court, or in the absence of such filing, as set forth in the Debtor's Schedules of

Liabilities filed in the Case, unless the Claim was listed in the schedules as disputed, contingent or unliquidated, in any event as to which no objection to the allowance thereof has been interposed within the applicable period fixed in the Plan or the Confirmation Order, or as to which any such objection has been determined by an order of the Court providing for allowance. Multiple proofs of claim of the same Class filed by a Creditor shall be aggregated and shall constitute a single Claim. The allowance of Administrative Claims shall be governed by the applicable provisions of the Code.

1.4 "Allowed Interest" means the Interest held by a shareholder of record of the Debtor a s to which no objection to the allowance thereof has been interposed within the applicable period of limitations fixed in the Plan or the Confirmation Order, or as to which any such objection has been determined by an order or judgment.

1.5 "Allowed Secured Claim" means an Allowed Claim secured by a Lien, security interest or other charge against property in which the Estate has an interest, or which is subject to setoff under section 553 of the Code, to the extent of the value (determined in accordance with section 5 06(a) of the Code) of the interest of such Allowed Secured Claim in the Estate's interest in such property or to the extent of the amount subject to setoff, as the case may be.

1.6 "Allowed Tax Claim" means a Tax Claim that is an Allowed Claim.

1.7 "Allowed Unsecured Claim" means an Unsecured Claim that is an Allowed Claim.

1.8 "Allowed Wage Claim" means a Wage Claim that is an Allowed Claim.

1.9 "Bankruptcy Rules" means the Federal Rules of Bankruptcy Procedure and any amendments thereof.

1.10 "Bar Date" means the last day for filing proofs of claim against the Debtor as fixed by order of the Court.

1.11 "JAMES H. MAPLES and VIRGINIA KATHLEEN MAPLES" means the Debtors.

1.12 "Case" means the chapter 11 bankruptcy reorganization case of the Debtors, pending before the Court and designated as ca se number 05-70128-M-11.

1.13 "Claim" means any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured, as defined in section 1 01(5) of the Code.

1.14 "Claimant" means the holder of a Claim against the Debtor or the Estate.

1.15 "Class" means a grouping of substantially similar Claims or Interests as designated in Article V of the Plan.

1.16 "Code" means the Bankruptcy Code, 11 U.S.C. § 101 et seq., and any amendments thereof.

1.17 "Committee" means the official committee of creditors holding unsecured claims appointed in the Case.

1.18 "Confirmation" means the entry of an order by the Court confirming the Plan at or after hearing pursuant to section 1129 of the Code.

1.19 "Confirmation Date" means the date of entry of an order of the Court confirming the Plan.

1.20 "Consummation" means completion of all Distributions to be made under the Plan.

1.21 "Court" means the United States Bankruptcy Court For The Southern Division of Texas, McAllen Division, before which the Case is pending or, in the event such court ceases to exercise such jurisdiction over the case, such court or adjunct or unit thereof that exercises jurisdiction over the Case in lieu of the United States Bankruptcy Court For The Southern District of Texas, McAllen Division.

1.22 "Convenience Claims" means all Allowed Claims which are $50 0.00 or less or which are more than $250 .00 and which are timely reduced to $250.00 by the holders thereof in accordance with the terms of the Plan, excluding Priority Claims.

1.23 "Creditors" means all entities with Claims against the Debtor or the Estate.

1.24 "Debt" means liability on a claim.

1.25 "Debtors" or "Debtors in Possession" means JAMES H. MAPLES and VIRGINIA KATHLEEN MAPLES.

1.26 "Disbursing Agent" means the Reorganized Debtor.

1.27 "Disclosure Statement" means the Debtor's Disclosure Statement as approved or conditionally approved by order of the Court entered on _____.

1.28 "Disputed Claims" means Claims against the Debtor or the Estate as to which an objection has been filed no later than after the Effective Date (or such later date as may be fixed by the Court) by the Debtor or the Reorganized Debtor and which objection has not been withdrawn or resolved by the entry of a Final Order.

1.29 "Distribution(s)" means the property (including payments) required by the Plan to be provided to the holders of Allowed Claims.

1.30 "Effective Date" means 90 days following the Confirmation Date.

1.31 "Estate" means the bankruptcy estate created upon commencement of t he Case pursuant to section 541 (a) of the Code.

1.32 "Final Order" means an order of the Court that has been entered and either:

1.32 .1 The time for appeal from such entered order has expired with no appeal having been timely filed; or

1.32 .2 Any appeal that had been filed timely has been dismissed or otherwise finally determined.

1.33 "Impaired" shall have the meaning provided in section 1124 of the Code.

1.34 "Interests" means the equity security interests in the Debtors.

1.35 "Lien" has the meaning provided by section 1 01(37) of the Code.

1.36 "Order of Confirmation" means the order of the Court confirming the Plan pursuant to section 1129 of the Code.

1.37 "Petition Date" means the date on which the Debtor s filed its chapter 11 petition with the Clerk of the Court, which was February 16, 2005.

1.38 "Plan" means this Debtor's Second Amended Plan of Reorganization in its present form or as it may be amended, modified or supplemented.

1.39 "Priority Claim" means any claim entitled to priority treatment pursuant to section 507 of the Code, except for Administrative Claims and Tax Claims.

1.40 "Property of the Estate" has the meaning provided by section 541 of the Code.

1.41 "Pro Rata " means proportionately so that the ratio of the amount of the Distribution made on account of a particular Allowed Claim to the Distributions made on account of all Allowed Claims of the Class in which the particular Allowed Claim is included is the same as the ratio of the amount of such particular Allowed Claim to the total amount of Allowed Claims of the Class of which such particular Allowed Claim is included.

1.42 "Reorganized Debtor" or "Reorganized Debtors" means the Debtor following the Confirmation Date.

1.43 "Tax Claim" means a Claim entitled to priority treatment pursuant to section 507(a)(8) of the Code.

1.44 "Unclaimed Property" means any Distributions which are unclaimed 90 days following the date of distribution. Unclaimed Property shall include (a) checks (and the funds represented thereby) which have been returned as undeliverable without a proper forwarding address, (b) funds for checks which have not been paid, (c) check s (and the funds represented thereby) which were not mailed or delivered because of the absence of a proper address with which to mail or deliver such property, and (d) interest on cash constituting Unclaimed Property.

1.45 "Unsecured Claim" means a Claim that is not secured by any Lien on property of the Debtor or Property of the Estate.

1.46 "Wage Claim" means a Claim entitled to priority treatment pursuant to section 507(a)(3) and/or (4) of the Code.

ARTICLE 2. CONSTRUCTION

2.1 Where not inconsistent or in conflict with the provisions of the Plan, the words and phrases used in the Plan shall have the meanings provided in the Code or the Bankruptcy Rules.

2.2 Section captions used in the Plan are for convenience only, and shall not affect the construction of the Plan,

2.3 The first letters of terms defined in the Plan are capitalized.

ARTICLE 3. CERTAIN GENERAL TERMS AND CONDITIONS

3.1 To the extent any Claim or portion of any Claim of a Creditor is a Disputed Claim, or is otherwise contingent or unliquidated, or has not been allowed by the Court, the Disbursing Agent may either reserve and segregate such Distribution under the Plan as is sufficient to provide for each of such Claims under the Plan, ask the Court to determine an appropriate reserve, or ask the Court to estimate for purpose of an allowance of any contingent or unliquidated Claim which would otherwise delay the administration of the Case.

3.2 Pursuant to section 112 3 of the Code, Article V of the Plan designates 6 classes of Claims and Interests. A Claim shall be deemed classified in a particular C lass only to the extent that the Claim qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of the Claim qualifies within the description of such different Class. A Claim is in a particular Class only to the extent that the Claim is an Allowed Claim or an Allowed Secured Claim in that Class. Multiple proofs of claim filed by a Creditor which qualify for inclusion within the same Class shall be aggregated, and, if allowed, shall constitute a single Allowed Claim.

ARTICLE 4. ADMINISTRATIVE EXPENSES

The holders of Allowed Administrative Claims entitled to priority under section 507(a)(1) of the Code, entities entitled to payments under section 546(c) or 553 of the Code, and entities entitled to payment of administrative expenses pursuant to sections 503 and 507(a) of the Code shall receive on account of such Allowed Claims or administrative expenses on or before the Effective Date of the Plan or as soon thereafter as is practicable.

Notwithstanding the foregoing, professionals employed at the expense of the Estate, and any entities which may be entitled to an allowance of fees and expenses from the Estate pursuant to sections 503(b)(2) through (6) of the Code, shall receive cash in the amount awarded to such professionals and entities as soon as practicable after an order is entered by the Court approving such award pursuant to sections 330 or 503 (b)(2) through (6) of the Code, unless any such professional or entity consents prior to Confirmation to other treatment.

Holder of Allowed Tax Claims, if any, entitled to priority under section 507(a)(8) of the Code will be paid on account of such Claims, in equal quarterly installments over a period of years not exceeding six years from the date of assessment after plan confirmation with interest at zero percent. This class does not include ad valorem taxes, which are secured by statute.

ARTICLE 5. DESIGNATION OF CLASSES OF CLAIMS AND INTERESTS

Claims and Interests are classified under the Plan as follows:

5.1 Class 1. -- Costs and expenses of administration as defined in the Bankruptcy Code for which application for or allowance or a claim is filed prior to the effective date, as the same are allowed, approved, and ordered paid by the court.

5.2 Class 2. -- Claims entitled to priority by sections 507(a)(3), 507(a)(4), 507(a)(5), and 507(a)(6) of the Bankruptcy Code, as the same are allowed, approved, and ordered paid by the court.

5.3 Class 3. -- Unsecured non-priority claims not subject to litigation.

5.4 Class 4. -- Unsecured non-priority claims subject to litigation.

5.5 Class 5. -- Ad valorem secured tax claim s.

5.6 Class 6. -- Secured claims held by the IRS.

5.7 Class 7. – Secured claims held by Option Mortgage Corporation.

5.8 Class 8. – Secured claims held by Johnny Partain and Teresa Partain.

5.9 Class 9. – Secured claims held by Texas State Bank.

5.10 Class 10. –Claims for which the Debtors guaranteed debts of third parties.

5.11 Class 11. –Claims of the United States of America for fines assessed against James H. Maples as a result of his misdemeanor conviction in September of 2006.

ARTICLE 6. CLASSES (NONVOTING) NOT IMPAIRED UNDER THE PLAN

Classes 1, 7 and 10 are not impaired under the Plan and shall be treated as follows:

6.1 Class 1 claims shall be paid in cash in full without interest on the 60th day following confirmation of the plan.

6.2 Class 7 claims shall be pa id as per the original contract terms.

6.3 Class 10 claims shall be resolved as per their original contract terms.

Pursuant to section 1126 (f) of the Code, each holder of a Claim in the above unimpaired C lasses is conclusively presumed to have accepted the Plan, and solicitation of acceptances with respect to members of such Classes is not required.

ARTICLE 7. TREATMENT OF (VOTING) CLASSES IM PAIRED UNDER THE PLAN

7.1 Classes 2, 3, 4, 5, 6, 8,9 and 10 are Impaired under the Plan and shall be treated in accordance with the terms stated below. The Debtor will solicit acceptances of the Plan from each Impaired Class. The Impaired Classes will be treated as follows:

7.1(a) Class 2. Allowed Class 2 claims shall be paid in equal quarterly installments over a period of years not exceeding six years from the date of assessment with interest at zero percent.

7.1(b) Class 3. Allowed Class 3 claim s shall be paid in full with zero interest over 40 quarterly payments commencing 365 days after confirmation.

7.1(c) Class 4. Allowed Class 4 claims shall be paid in full with zero interest over 40 quarterly payments commencing 365 days after entry of a final non-appealable judgment. However, if such claims are being

prosecuted against the Debtors outside of the U.S. Bankruptcy Court, a notice of intent to pursue such claim as specified in the disclosure statement must be filed and served within 60 days of confirmation or else the claim shall be considered as abandoned and shall thereafter be disallowed.

7.1(d) Class 5 claims shall be paid in full with interest at 12.0 percent per annum in 24 quarterly payments commencing 45 days after confirmation.

7.1(e) Class 6 claims shall receive 100 percent payment in 24 quarterly payments commencing on the 90th day following confirmation. Interest will be paid on such claims at the rate designated by the IRS for chapter 11 plans.

7.1 (f) Class 8 claims shall be paid in 72 equal monthly installments with interest at 10 percent per annum, with the first payment commencing 45 days after confirmation. Debtors shall retain the right to prepay without penalty in whole or in part all allowed Class 8 claims, and Debtor shall retain the right to designate at the time of any early payment whether such payment shall treated as a payment for a subsequent month or months. Any award by a U.S. District Court of damages and penalties and sanctions arising from the violation of court orders issued in Adversary No. 05-07009 will be offset against Class 8 claims.

7.1(g) Class 9 claims shall be paid as follows. Upon confirmation, Debtors shall have no monthly payments for 31 day s and thereafter Debtors shall resume payments according to the original contract terms.

7.1(h) Class 11 once timely filed and allowed by the Court will be paid in full without interest in equal quarterly installments over a period of years not exceeding six years from the date of assessment with interest at zero percent, with the first payment due 45 days after confirmation.

7.2 Cramdown. In the event that any Impaired C lass entitled to vote on the Plan shall fail to accept the Plan in accordance with section 1129 (a) of the Code, the Debtor shall request that the Court confirm the Plan in accordance with scction 1 129 (b) of the code.

ARTICLE 8. MEANS FOR IMPLEMENTATION AND EXECUTION OF THE PLAN.

8.1 Funding the Plan. The Plan shall be funded from the revenues obtained by the Debtors' employment and from the proceeds of litigation against the bus manufacturer (MCI), BusBank and Sunrise Senior Living, Inc. described in the Second Amended Disclosure Statement.

8.2 Disbursements. The Reorganized Debtors shall act as Disbursing Agent and shall make all Distributions in accordance with the Plan. To make the Distributions due under the Plan, the Reorganized Debtors, as Disbursing Agent, shall distribute all property and payments called for by the Plan.

8.3 Reserve For Disputed Claims.

8.3.1 On and after the Effective Date, the Distributions reserved for the holders of Disputed

Claims shall not be distributed but shall be held by the Reorganized Debtor in a segregated account (the "Disputed Claims Reserve") for the benefit of the holders of the Disputed Claims entitled thereto under thc Plan. Except to the extcnt that the Court shall have estimated under section 502(c) of the Code or otherwise determined that a good and sufficient reserve for Disputed Claims is less than the full amount thereof, there will be deposited into the Disputed Claims Reserve an amount of cash which would have been distributed on account of all Disputed Claims if all Disputed Claims were allowed in the full amount claimed by the holders thereof.

8.3.2 At such time as a Disputed Claim becomes an Allowed Claim, the Distribution which would have been disbursed had the Disputed Claim been an Allowed Claim on the Effective Date shall be released from the Disputed Claims Reserve and delivered to the Disbursing Agent for delivery to the holder of such Allowed Claim within thirty (30) days. At such time a s all Disputed Claim s have been finally determined, the balance of the cash not therefore distributed shall be returned to the Reorganized Debtor.

8.3 .3 Sections 8.3.1 and 8 .3.2 of this plan shall not apply to Class 4 claims.

8.4 Unclaimed Distributions.

8.4.1 The Reorganized Debtor shall deposit any Unclaimed Property in an Unclaimed Property Reserve to be held in trust for the benefit of the holders of Allowed Claims entitled thereto under thc terms of the Plan.

8.5 Time For Filing Objections to Claims

8.5.1 Any party in interest may file an objection to any claim within 90 days after the date the order confirming the Plan becomes final and nonappealable. Objections not filed within that time shall be deemed waived.

ARTICLE 9. EXECUTORY CONTRACTS

9.1 Except as specified below, all contracts which exist between Debtors and any individual or entity, whether such contracts be in writing or oral, and which are listed in Schedule G, are hereby ACCEPTED.

ARTICLE 10. RETENTION OF JURISDICTION

The Court shall retain jurisdiction after confirmation until all payments and distributions called for under the Plan have been made and until the entry of the final decree, in respect to the following matters:

10.a. To enable any party in interest to consummate any and all proceedings that it may bring prior to confirmation to set a side liens, or to recover any preferences, transfers, assets, or damages to which it may be entitled under the provisions of the Bankruptcy Code or other federal or state law.

10.b. To hear and determine all claims, including claims arising from the rejection of any executory contract, and objections made to such claims.

10.c. To liquidate or estimate dam ages or determine the manner and time for such liquidation or estimation in connection with any contingent or unliquidated claim.

10.d. To adjudicate all claims to any lien on any property of the Debtor or any proceeds thereof.

10.e. To adjudicate all claims or controversies arising during the pendency of the chapter 11 case.

10.f. To recover all assets and properties of the Debtor, wherever located, to the extent necessary for the consummation of this Plan.

10.g. To allow or disallow any claim.

10.h. To determine the propriety of the term and conditions of the sale of any property of the Debtor.

10.i. To make any orders which may be necessary or appropriate to carry out the provisions of this Plan.

ARTICLE 11. SPECIAL PROVISION FOR UNITED STATES TRUSTEE.

11.1 The reorganized Debtor shall be responsible for timely payment of fees incurred pursuant to 28 U.S.C. § 193 0(a)(6). After confirmation, the reorganized Debtor shall file with the court and serve on the United States Trustee a monthly financial report for each month (or portion thereof) the case remains open in a format

prescribed by the United States Trustee and provided to the Debtor by the United States Trustee.

ARTICLE 12. RIGHTS UPON DEFAULT IN PLAN PAYMENTS

If Debtors defaults in any payments due under the plan, any party in interest may file a motion to revoke confirmation. If Debtors remains in default and fails to cure the default, confirmation may be revoked by order of the Court.

ARTICLE 13. RETENTION OF LIEN UNTIL PAYMENT

Any entity having a lien shall retain their liens until all payments due under the plan to them have been made.

DATED: March 1, 2007

/s/James H. Maples & /s/Virginia Kathleen Maples
JAMES H. MAPLES & VIRGINIA KATHLEEN MAPLES
Debtors in Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

IN RE:	§	
JAMES HOWARD MAPLES; fdba	§	CASE NO:
GLOBAL TOURS & CHARTERS,	§	05-70128
VIRGINIA KATHLEEN MAPLES	§	
Debtor(s)	§	CHAPTER 11

ORDER CONFIRMING PLAN

The second amended plan under chapter 11 of the Bankruptcy code filed by James H. Maples and Virginia Kathleen Maples, and a copy of said plan and of the Disclosure Statement approved by the Court having been transmitted to the holders of claims and interests; and

It having been determined after notice of hearing:

1. That the plan complies with the applicable provisions of chapter 11 of the Code;
2. that the proponent of the plan complies with the applicable provisions of the Code;
3. That the plan has been proposed in good faith and not be any means forbidden by law;
4. A. That any payment made or promised by the proponent, by the debtor, or by any person issuing securities or acquiring property under the plan, for services or for costs and expenses in, or in connection with, the case, or in connection with the plan and incident to the case, have been disclosed to the court; and

   B. Any such payment before confirmation is reasonable; or if such payment is to be fixed after confirmation of the plan, such payment is subject to the approval of the court as reasonable;
5. A. The proponent of the plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor director, officer, or voting trustee of the

debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan; and the appointment to, or continuance in , such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy;

B. The proponent of the plan has disclosed the identity of any insider that will be employted or retained by the reorganized debtor, and the nature of any compensation for such insider;

6. Any regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval;

7. With respect to each class:

A. each holder of a claim or interest of such class has accepted the plan; or will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7; or

B. If section 1111(b)(2) of the Code applies to the claims of such class, each holder of a claim of such class will receive or retain under the plan on account of such claim property of a value, as of the effective date of the plan, that is not less than the value of such creditor's interest in the estate's interest in the property that secures such claims;

8. With respect to each class, such class has accepted the plan, or such class is impaired under the plan;

9. Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that

A. with respect to a claim of kind specified in sections 507(a)(1) or 507(a)(2) of the Code, on the

effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;

B. with respect to a class of claims of a kind specified in sections 507(a)(3), 507(a)(4), 507(a)(5), 507(a)(6) or 507(a)(7) of the Code, each holder of a claim of such class will receive, as of the effective date of the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or, if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim; and

C. with respect to a claim of a kind specified in section 507(a)(8) of the Code, the holder of such claim will receive on account of such claim deferred cash payments, over a period not exceeding 6 years after the date of assessment of such claim, of a value, as of the effective date of the plan, equal to the allowed amount of such claim;

10. At least one class of claims has accepted the plan, determined without including any acceptance of the plan by an insider holding a claim of such class;

11. Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

IT IS THEREFORE ORDERED that the second amended plan of reorganization filed by JAMES H. MAPLES and VIRGINIA KATHLEEN MAPLES on March 1, 2007, as modified by the terms contained in the agreed orders resolving objections to confirmation of the Plan, is confirmed.

Dated: August 22, 2007

/s/ Richard Schmidt
HONORABLE RICHARD S. SCHMIDT
UNITED STATES BANKRUPTCY
JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

IN RE:	§	
JAMES HOWARD MAPLES AND	§	CASE NO:
VIRGINIA KATHLEEN MAPLES	§	05-70128
Debtor(s)	§	CHAPTER 11
	§	
TEXAS STATE BANK,	§	
Movant,	§	
vs.	§	
JAMES HOWARD MAPLES AND	§	
VIRGINIA KATHLEEN MAPLES	§	
Debtors-Respondents;	§	

TEXAS STATE BANK'S MOTION FOR RELIEF
FROM THE AUTOMATIC STAY

THIS IS A MOTION FOR RELIEF FROM THE AUTOMATIC STAY. IF IT IS GRANTED, THE MOVANT MAY ACT OUTSIDE OF THE BANKRUPTCY PROCESS. IF YOU DO NOT WANT THE STAY LIFTED, IMMEDIATELY CONTACT THE MOVING PARTY TO SETTLE. IF YOU CANNOT SETTLE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY AT LEAST TWO DAYS BEFORE THE HEARING. IF YOU FILE YOUR RESPONSE LESS THAN 5 DAYS BEFORE THE HEARING, YOU MUST SEND A COPY TO THE MOVANT BY FACSIMILE, BY HAND, OR BY ELECTRONIC DELIVERY. IF YOU CANNOT SETTLE, YOU MUST ATTEND THE HEARING. EVIDENCE MAY BE OFFERED AT THE HEARING AND THE COURT MAY RULE.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

THERE WILL BE A HEARING ON THIS MATTER ON JUNE 7, 2006, AT 9:00 A.M., UNITED STATES COURT HOUSE, 600 EAST HARRISON, 3RD FLOOR, BROWNSVILLE, TEXAS

TO THE HONORABLE JUDGE OF SAID BANKRUPTCY COURT:

COMES NOW Texas State Bank ("TSB") and files this Motion for Relief from the Automatic Stay ("Motion") in the above entitled and numbered bankruptcy proceeding ("Bankruptcy")and in support thereof would respectfully show this Bankruptcy Court the following:

I. JURISDICTION AND PARTIES

1. On or about February 16, 2005, James H. and Virginia Maples (hereinafter "Debtors") filed their Voluntary Petition for relief under Chapter 11 of Title 11 of the United States Code and have been acting as debtors-in-possession throughout this Bankruptcy.

2. This Court has jurisdiction of this Motion pursuant to 11 U.S.C. §§ 361 and 362 and 28 U.S.C. § 1334. This matter is a core proceeding pursuant to 11 U.S.C. §157.

3. James H. and Virginia Maples are the debtors in this Bankruptcy and may be served with Notice of the Preliminary Hearing on this Motion and this Motion pursuant to Bankruptcy Rule 7004 and Local Bankruptcy Rule 4001 by mailing a copy to their address given in the Voluntary Petition as follows:

James H. and Virginia Maples

605 Wisteria Avenue

McAllen, TX 78504

and by serving their bankruptcy attorney of record at the following address:

Kelly K McKinnis

Attorney at Law

612 Nolana Loop Ste 240

McAllen, TX 78504

4. Global Limo, Inc. is a third party co-debtor and may be served with Notice of the Preliminary Hearing on this Motion and this Motion pursuant to Bankruptcy Rule 7004 and Local Bankruptcy Rule 4001 by mailing a copy to its registered agent, James Maples, at the following addresses:

Global Limo, Inc.

c/o Registered Agent

James H. Maples

605 Wisteria Avenue

McAllen, TX 78504

5. TSB is a secured claimant in this case as set forth below.

II. BUS NOTES

6. Debtor has guaranteed and is indebted to TSB as to the following third party notes in which part of the security for the repayment thereof is buses of the third party, a wholly owned corporation of the Debtors, Global Limo, Inc ("Global Limo"):

A. Promissory Note #140329 dated 07/15/04 in the original principal amount of $135,000.00 by and between Texas State Bank as lender and Global Limo, Inc. as borrower and Guaranty thereof by James H. Maples as guarantor; and

B. Promissory Note #140485 dated 08/25/04 in the original principal amount of $52,000.00 by and between Texas State Bank as lender and Global Limo, Inc. as borrower and Guaranty thereof by James H. Maples as guarantor; (hereinafter the two promissory notes with guarantees will collectively be referred to as "Bus Notes").

7. As part of the security for repayment of the Bus Notes, Global Limo granted TSB a security interest in the following collateral:

1991 Eagle Bus, VIN #1EUBN6A16LB070377
1988 Eagle Bus, VIN #1EUBN6A18JB070166
1987 Eagle Bus, VIN #1EUBN6A16HB070094
1987 Eagle Bus, VIN #1EUBN6A17HB070105
1987 Eagle Bus, VIN #1EUBN6A19HB070106
1979 MCI Bus, VIN #S14055
1979 MCI Bus, VIN #S14078
1991 Vanhool T800, VIN # YE2TA72BOM2021707
1991 Vanhool T800, VIN # YE2TA72B6M2021713
(collectively, the "Buses");

all of which are more particularly described in the Security Agreement (collectively, "Bus Security Agreements") for each of the promissory notes described above. TSB has duly perfected its secured interest in the Buses as it is reflected as the lienholder on the Texas Certificates of Title for the Buses.

8. Copies of the Bus Notes, Bus Security Agreements, Bus Guaranties and the Texas Certificates of Title for the Buses have previously been provided to this court in TSB's proofs of claims on file herein (Claim Nos. 4 and 5); said proofs of claims, with all attachments and exhibits, being incorporated herein for all purposes as if fully set forth at length. Additional copies will be provided by the undersigned upon request. Attached hereto as Exhibit "A", and for all purposes made a part hereof, is a summary of the Bus Notes, Bus Security Agreements, Bus Guarantys and the Texas Certificates of Title for the Buses which are attached to TSB's proofs of claims on file herein.

9. As of May 12, 2006, the total outstanding balance owed on the matured Bus Note #140329, excluding costs of collection, is $100,672.54 and the total outstanding balance owed on the matured Bus Note #140485, excluding costs of collection, is $34,449.60.

III. Condo Note

10. Debtor has guaranteed and is indebted to TSB as to a third party note dated January 21, 2005 in the original

principal amount of $47,000.00 ("Condo Note") in which part of the security for the repayment thereof is a deed of trust ("Deed of Trust") on real property of the third party, Global Limo, more particularly described below:

> The East 18.41 feet of the West 60.82 feet of Lot 37, Cazador Subdivision, Unit No. 2, an Addition to the City of McAllen, Hidalgo County, Texas, according to the map thereof recorded in Volume 19, Page 58, of the Map Records of Hidalgo County ("Condo").

11. To further secure the indebtedness owed to TSB, Global Limo assigned all rents and leases as to the Condo to TSB as evidenced in the Deed of Trust.

12. Copies of the Condo Note, Deed of Trust, and the Condo Guaranty have previously been provided to this court in TSB's proof of claim on file herein (Claim No.6); said proof of claim, with all attachments and exhibits, being incorporated herein for all purposes as if fully set forth at length. Additional copies will be provided by the undersigned upon request. Attached hereto as Exhibit "A", and for all purposes made a part hereof, is a summary of the Condo Note, Deed of Trust, and the Condo Guaranty which are attached to TSB's proof of claim on file herein.

13. No payments have been made to TSB on the Condo Note. As of May 11, 2006, the total outstanding balance owed on the Condo Note, excluding costs of collection, is $52,743.74 and the note is fully matured. Interest continues to accrue at the rate of $13.71 per diem. Upon information and belief, ad valorem taxes are due and unpaid for 2005.

IV. Relief From the Automatic Stay

14. By reason of the foregoing, TSB is entitled to relief from the automatic stay pursuant to 11 U.S.C. §§362 (d)(1) and (d)(2)(A) and (B) since: (a) Debtor has failed and continues to fail to provide adequate protection to TSB, (b) the Debtor has little or no equity in the Buses, Condo, and/or Rents and (c) the Buses, Condo, and Rents are not necessary to the Debtor's effective reorganization.

WHEREFORE, PREMISES CONSIDERED, TSB requests that upon hearing of this Motion, the automatic stay be terminated as to the Buses, Condo, and Rents to permit TSB to seek its statutory and other available remedies pursuant to its documents and state law including, but not limited to, the right to have such contact with Debtors or their representatives as is necessary to enforce such rights, take possession and foreclose upon the Buses and Condo, and collect all Rents or, alternatively, to be afforded adequate protection, and to be granted such other and further relief, both at law and equity, to which TSB may show itself justly entitle to receive.

Respectfully submitted,

/s/ Vicki M. Skaggs
VICKI M. SKAGGS
Federal I.D. No. 1226
State Bar No. 13320100
ATLAS & HALL, L.L.P.
P.O. Box 3725
McAllen, Texas 78502-3725
(956) 682-5501 Office
(956) 686-6109 Telecopier
ATTORNEY FOR TEXAS STATE BANK

OF COUNSEL:
ATLAS & HALL, L.L.P.
818 Pecan
P.O. Box 3725
McAllen, Texas 78502-3725
(956) 682-5501 Office
(956) 686-6109 Telecopier

CERTIFICATE OF CONFERENCE

I, Vicki M. Skaggs, do hereby certify that I attempted to confer with Debtors' counsel, Kelly McKinnis, on May 11,

2006, and May 12, 2006, regarding the above referenced Motion for Relief from the Stay filed by Texas State Bank and he was unavailable to confer. Therefore, no agreement could be reached on the requested relief.

/s/ Vicki M. Skaggs
VICKI M. SKAGGS

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

IN RE:	§	
JAMES HOWARD MAPLES AND	§	CASE NO:
VIRGINIA KATHLEEN MAPLES	§	05-70128
Debtor(s)	§	CHAPTER 11
	§	
TEXAS STATE BANK,	§	
Movant,	§	
vs.	§	
JAMES HOWARD MAPLES AND	§	
VIRGINIA KATHLEEN MAPLES	§	
Debtors-Respondents;	§	

ORDER GRANTING TEXAS STATE BANK'S MOTION FOR RELIEF FROM THE AUTOMATIC STAY

Came on for consideration before this bankruptcy court (Doc.#222) the Motion for relief from the Automatic Stay (Dpc/#214)("Motion") filed herein by Texas State Bank("TSB") wherein the parties appeared and Johnny Partain and, after considering evidence, pleadings and arguments of counsel and parties, it appears to this court that TSB is entitled to relief from the automatic stay for cause and pursuant to 11 USC §§362(d)(1) and 362(d)(2) as to the Real Property and Assignment of Rents and Leases, more particularly described below; it is therefore,

ORDERED, ADJUDGED and DECREED that Texas State Bank is granted relief from the automatic stay to permit it to take all action under state law and applicable documents including, but not limited to, the Real Estate Promissory Note and Deed of Trust, and the Condo Guaranty described in the Motion for Relief from Stay on file herein, a copy of which is attached hereto as Exhibit A and for all purposes made a part of this Order, in order to enforce any and all of Texas State Bank's rights in the below described Real Property, and the assigned rents and leases as to the Real Property, including, without limitation, the right to have such contact with Debtors,

Global limo, Inc. and/or their representatives as are necessary to enforce such rights, accelerate the indebtedness owed, take possession of the Real Property, rents and/or leases and assemble, collect, sell, foreclose and/or setoff as to the Real Property, rents, and leases, and apply the proceeds therefrom to the outstanding indebtedness owed to Texas State Bank:

REAL PROPERTY:

The East 18.41 feet of the West 60.82 feet of Lot 37, Cazador Subdivision, Unit No. 2, an Addition to the City of McAllen, Hidalgo County, Texas, according to the map thereof recorded in Volume 19, Page 58, of the Map Records of Hidalgo County ("Condo").

Signed:8/22/07

/s/Richard S. Schmidt
RICHARD S. SCHMIDT
UNITED STATES BANKRUPTCY
JUDGE

NOVEMBER 30, 2007
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

JOHNNY PARTAIN,	§	
Petitioner,	§	
VS.	§	CIVIL ACTION NO. M-07-92
	§	
BRAVO, *et al*,	§	
Respondent.	§	

NOTICE OF HEARING TRANSCRIPT FROM NOVEMBER 30, 2007

COMES NOW JOHNNY PARTAIN, Plaintiff in the above styled and numbered cause and files his *Notice Of Hearing Transcript From November 30, 2007,* and in support thereof respectfully shows unto the Court as follows:

On November 30, 2007 a hearing was held in the above styled and numbered cause. Attached hereto is a transcript of that hearing and affidavit to be included in the record of this cause.

Respectfully Submitted,

/s/Johnny Partain
JOHNNY PARTAIN
7020 N 16th Street
McAllen, Texas 78504
956-240-1821

Certificate of Service

I, Johnny Partain, certify that I have caused to be served a true and correct copy of *Notice Of Hearing Transcript From November 30, 2007*on this June 17, 2008, through hand delivery or email as indicated to:
LAW OFFICE OF ROEL ESQUIVEL, P.C.
Attorney at Law

114 S. 12th Ave., Edinburg, Texas 78539, (956) 289-1414,
Fax#: 956-289-1422
cescobar820@yahoo.com [email]

JUDGE CRANE: I'm going to call the civil case first. 07CV92, Johnny Partain versus Warden Bravo and others.

MR. ESQUIVEL: Roy Esquivel, on behalf of Mr. Bravo.

JUDGE CRANE: Good morning, Mr. Partain. This won't be long. As you know, I have another case ongoing, and we've really finished – or we almost concluded our analysis. Lots of issues, Mr. Partain, that you raised, and we've really finished our briefing on all but one very significant issue, very good point that Mr. Partain raises, and that's the issue of the fact that this condominium that it was the subject of the preliminary injunction and the contempt order. Mr. Partain has submitted documents that is was actually owned by Global Limo, Inc., who is not a party to the bankruptcy proceeding, and, therefore the argument Mr. Partain makes is that the contempt order by the judge was void ab initio, or even the preliminary injunction that proceeded that formed the basis of the contempt order was void ab initio, because the court didn't have jurisdiction over this piece of property.

It's conceded that Global Limo, Inc. was not part of the bankruptcy, that – also that Mr. Partain's wife, Theresa, was not part of the bankruptcy, either, and that this condominium was owned by Global Limo, Inc., but, alternatively, Ms. Partain owned it, as well, and so there being no jurisdiction over the property, not possible that Mr. Partain could be held in contempt for appropriating or converting the revenues from that condominium for those three or four months.

That is an argument that has received no responsive briefing, Mr. Esquivel. I mean, there's nothing – there was no response made to that, and it's a very difficult bankruptcy argument. This court is not a bankruptcy court, we don't see these arguments frequently, and so it

takes us more time to analyze them, and we always look for the benefit of briefing from counsel, both sides. This is – has only been briefed by Mr. Partain, not by the respondent, and so what I'm going to do today is order a response to that one issue, because that's the only issues that we have not concluded our briefing on.

The court is very busy the next few weeks, I guess that's to your benefit, because I'm going to reset this for final hearing in January. And, Mr. Partain, you need do nothing. Your briefing is concluded, but I need a response to that one issue. Are you prepared to do that, Mr. Esquivel? I know you're probably not a bankruptcy specialist, either, and these are very difficult issues pertaining whether it's a court proceeding, you know, the reach of a bankruptcy estate. I don't know if you want to enlist co-counsel.

MR. ESQUVEL: Your Honor, what I will do, Your Honor, is seek a bankruptcy attorney to assist me. My representation is to represent Warden Bravo.

JUDGE CRANE: Right.

MR. ESQUIVEL: Warden Bravo released Mr. Partain.

JUDGE CRANE: Right.

MR. ESQUIVEL: I'm here representing Warden Bravo.

JUDGE CRANE: Right. It's a temporary release. I know you – I think you might raise the point of mootness, or someone did, but clearly this court ordered the temporary release pending ruling on the habeas petition. And, therefore, Mr. Partain still faces jeopardy, and so that's – that argument isn't going to be dispositive, and therefore, we are reaching these other issues. And so you'll have about a month. I don't have the exact date in January, it depends a little bit on what happens at tomorrow's final pretrial – I'm sorry – Monday's final pretrials, and so I'm just going to issue an order that will go out on Monday setting that date, but it will likely be the first week of January. It's probably going to be that first Wednesday in January, but, again, not sure. Just look for

that order. It will go by mail to you. I presume, Mr. Partain (inaudible) to you.

But if you – I need your briefing in really before Christmas. That gives us a week or so to look at the issues before we have the hearing, so that gives you three and a half weeks. Do you think you can get it done by then?

MR. ESQUIVEL: You Honor, I'll seek bankruptcy counsel today. Hopefully, I'll have them on board by Monday.

JUDGE CRANE: I would think, yeah, that there are plenty out there who aren't already involved in this case. I mean, there's a lot of parties involved in this bankruptcy already. A lot of lawyers have already been gobbled up, but probably there's still a few out there.

Okay. I'll issue the order today. If – I'm sorry – on Monday. If it looks like it's going to be later in the month on January, then I'll give you a little more time to get your briefing in, but I want briefing on just that one issue. Is that – we've decided everything else.

Okay. Thank you all for being here this morning. You're excused until January.

****

AFFIDAVIT

STATE OF TEXAS ‡
‡
COUNTY OF HIDALGO ‡

BEFORE ME, the undersigned authority, personally appeared Johnny Partain, who after being duly sworn, on oath says that he/she is over twenty one (21) years of age, is of sound mind, has never been convicted of a crime, and is fully competent to make and execute this affidavit. Johnny Partain did swear and state upon his oath as follows:

I, Johnny Partain, have personal knowledge of the following event and facts. On June 16, 2008, Action

Reporting, 101 Wisteria Ave., McAllen, Texas, 956-631-1024, released a written transcription of hearing held on November 30, 2007, in the courtroom of Hon. Randy Crane, case no. M-07cv092. Said transcription was taken from the audio recording (CD) of the hearing that I purchased from the District Clerk and represents an accurate record of the hearing. I have reviewed the transcript and audio recording and declare the transcript is an almost a perfectly accurate reflection of Judge Crane's communications. The transcript does not necessarily contain any minor or insignificant comments from council. The CD is kept at my domicile and may be inspected on reasonable request. Affiant further sayeth not.

/s/Johnny Partain
JOHNNY PARTAIN

SUBSCRIBED AND SWORN BEFORE ME, the undersigned authority, on this the 17th day of June, 2008.

/s/Alicia F. Salinas
NOTARY PUBLIC, STATE OF TEXAS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

JAMES MAPLES, ET. AL.	§ CASE NO.
	§ 05-7009-M-ADV
VERSUS	§ HOUSTON, TEXAS
	§
JOHNNY PARTAIN, ET. AL	§ MARCH 29, 2005
	§ 4:01 P.M. TO 4:57 P.M.

TRO HEARING, #1
(VIDEO-CONFERENCE – JUDGE IN HOUSTON, COUNSEL IN MCALLEN)

BEFORE THE HONORABLE MARVIN ISGUR UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

FOR THE PLAINTIFFS:	SEE NEXT PAGE
FOR THE DEFENDANTS:	SEE NEXT PAGE
COURTROOM DEPUTY:	CASSANDRA SONIER
COURT RECORDER:	PAULA CRAWFORD

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Proceedings recorded by electronic sound recording, transcript produced by transcription service.

APPEARANCES:

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FOR JOHNNY PARTAIN:

PRO SE

FOR TEXAS STATE BANK:

VICKI M. SKAGGS
MICHEAL TUTTLE
ATLAS & HALL, L.L.P.
818 PECAN
MCALLEN, TEXAS 78502

THE COURT: Please be seated.

All right, were going to call the *James and Virginia Kathleen Maples versus Partain* matter, the Adversary Proceeding that we have today.

Good afternoon, gentlemen. Go ahead and make your appearances.

MR. MCKINNIS: Your Honor, Kelly McKinnis for the Plaintiffs, James Maples and Virginia Kathleen Maples. Mr. Maples is present in the courtroom with me.

MR. PARTAIN: All right. Who do we have on behalf of the defendants?

THE COURT: Yes, sir.

MR. PARTAIN: I'm Johnny Partain, the defendant in this hearing today, sir.

THE COURT: All right.

MS. SKAGGS: Your Honor, Vicky Skaggs and Michael Tuttle for Texas State Bank, a secured creditor in this matter.

THE COURT: Mr. Partain, do you have an attorney that is representing you in this matter?

MR. PARTAIN: No, Your Honor, I don't.

THE COURT: All right.

Let's proceed, Mr. McKinnis. It's your motion.

MR. MCKINNIS: Your Honor, we're here today requesting a temporary restraining order. In a nutshell, what we basically have is Mr. Maples filed bankruptcy on February the 16th, 2005. At the time he filed bankruptcy, the corporate charter of a corporation called Global Limo, Inc. had been forfeited back in June 2004 for failure to pay its franchise tax.

As a result, Your Honor, under Texas case law, the debtor, Mr. Maples, who owned the shares became the beneficial owner of the stock.

That some time, a date in January of 2005, Mr. Partain obtained a turnover order from the state court which purported to transfer title to him in corporate share of Global Limo, Inc. Mr. Maples – The testimony will show that Mr. Maples, at no time has he surrendered physical possession of those corporate shares. And besides that fact, Mr. Maples still remains in physical possession of the corporate shares. And as of February 16th, 2005, the day of filing of this bankruptcy in Chapter 11, the corporate charter remained lapsed.

Our position, Your Honor, is that because the corporate charter was lapsed, the debtor and the plaintiffs in this lawsuit became the beneficial owner of the assets of the corporation once the charter lapsed.

Subsequently to that time, on March the 7th, Mr. Partain started grabbing assets of Global Limo, Inc. and we believe are now the debtor's assets. And Mr. Partain has continued to disrupt the business operation of Global Limo, Inc. He has rerouted the mail from the office of Global Limo, Inc. And check worth thousand of dollars have been routed away from the corporate office to Mr. Partain's home, making it very difficult for Mr. Maples to run the business.

And we just believe that this gentleman is violating the automatic stay by doing that, Your Honor. That's a nutshell of our condition.

THE COURT: All right. Let me ask Ms. Skaggs and Mr. Tuttle whose side they're taking, if any in this, so we get the order of presentation.

MS. SKAGGS: I'm sorry, Your Honor?

THE COURT: Are you siding with Mr. Mckinnis' client, or are you siding with Mr. Partain, or are you not taking sides in this dispute?

MS. SKAGGS: Your Honor, we're caught in the middle. Our secured interest is in the busses of Global Limo. And at one time at the beginning of this case, Mr. Partain removed three of the buses from the premises and my bank did contact Mr. Partain and say we wanted those buses to remain on the premises for insurance purposes and otherwise, and Mr. Partain removed those buses, and these are large charter buses, Your Honor.

THE COURT: Let me – I just want to – Hold on, what I want to do is get the order of presentation right. I want to give Mr. Partain a fair chance to answer.

MS. SKAGGS: I'm sorry.

THE COURT: If you're going to be arguing against Mr. Partain, I want everybody that's going to argue against him to go first. If you're neutral, then you can stay neutral. And if you're going to defend Mr. Partain's position, then I'm going to let you go after Mr. Partain. So where does your client's position fit into this?

MS. SKAGGS: I believe that we're more concerned with the continuation of the operation of the corporation. So, I – in that respect, I believe that we are more prone to the debtor's position at this period of time.

THE COURT: Okay. Then I'm going to let you go ahead and speak so – Then you go ahead and speak because I'm going to let Mr. Partain hear everybody's allegations against him so that he can answer everything at one time. Go ahead. I'm sorry to interrupt you, ma'am. Go ahead.

MS. SKAGGS: You want me to proceed, You Honor?

THE COURT: Yes, ma'am.

MS. SKAGGS: Again, our concern is our collateral is our main concern and the interruption of the business. The notes, as a result of all these actions, have now become delinquent. And, Your Honor, the three buses that were removed were secreted from us. And we were not permitted – we were not told where they were despite our requests of where they were located.

The insurance was threatened to be canceled. It has since been reinstated and the buses have come back, pursuant to a hearing with Judge Schmidt.

The other thing, Your Honor, is again, the business has been disrupted. And the notes are not being paid, and we want to see continuing function of the corporation se we can be paid, and we know that our collateral is secured, Your Honor.

THE COURT: Thank you, ma'am.

Mr. Partain?

MR. PARTAIN: Yes, Your Honor. And excuse me, Your Honor, I'm sick today.

This hearing is actually based on the arguments that we've had in three other emergency hearings. I haven't had a lot of time to prepare for it, because I only got noticed two hours ago. But in a nutshell, I actually gained control of the corporation, or all title passed to me in January of this year on the 27th.

At that time, Mr. Maples was fired or terminated as an employee of the corporation. That was following – or that was two days later. And he was sent notice out to his house. He was sent notice to the business. He was given notice by the police that came out there to evict him, and he was also left notice on the door not to enter the premises anymore. But the day after, he broke into the business, changed the locks, and placed a security guard out front to keep me out of the business.

I think Mr. McKinnis has based his arguments being that this was under the jurisdiction of the bankruptcy court based on Article 28, U.S.C. Chapter 157, and that would be

that this is one of the core issues that fall into the jurisdiction of this Court. The problem is that I am the owner of the business. I have been given the ownership of the business by the court already.

Judge Schmidt did not want to decide on this. He wanted to turn this back over to the County Courts to go ahead and let them determine the actual ownership of the business.

Mr. Maples has already asked for reconsideration of the judgment that was handed down. He'd already been denied. There really much Mr. Maples can do than to come to this Court and ask to have this court go against what the other court had already said and return this company to him.

Now as far as what we were supposed to accomplish in the last two weeks with the company, we were supposed to come up with a plan so we can run the company until Mr. Maples can finish with his litigation in the appeals court here in Hidalgo.

As far as I know, Mr. Maples has not filed any appeals; hasn't done anything. I've entered five or six proposals so that we can go ahead and make this work. All of them have been declined. Mr. Maples showed that he wanted to settle. We seem to be stuck on an issue where there was a house that he had taken – placed under corporate – the corporation in order to hide from the execution from me after I was a judgment for fraud against him two years ago.

I would like to enter into as Exhibit #1, a letter given to him by his lawyer that shows that he should create a company called Pro Limo, Incorporated to hide his asset under it, and to cross-collateralize his assets with the bank in order to prevent execution.

MR. MCKINNIS: Your Honor, Kelly McKinnis for the plaintiff. The lawyer he speaks of is not here; he's prior counsel. We would object to introdu8ction of that letter as it violates attorney/client privilege, and this goes to the idea that Mr. Partain has been coming in and taking mail and

taking document, taking personal belongings that belong to the debtor during the course of the bankruptcy. And we object.

MR. PARTAIN: Your Honor, this letter right here show fraudulent conveyance.

THE COURT: Where did you get – Where did you get the letter?

MR. PARTAIN: I got it off my office over here at Global Limo, and I had Mr. Maples kicked out of the office by the police.

THE COURT: Who is the letter addressed to?

MR. PARTAIN: It's addressed to James Maples.

THE COURT: Why did you –

MR. PARTAIN: One of my –

THE COURT: Why did you have the right to go into his personal legal files?

MR. PARTAIN: Well, Your Honor, at the time, I didn't know what I actually had. I was privy to the box because at the time Mr. Maples has done everything he can to avoid having to pay me. That leads to this bankruptcy and another bankruptcy that was filed back in June the 19th of 2000.

Every time I get close to him, he does something else to prevent collection. I didn't really know what was going to happen, but I did know that as long as I had the purse strings of the company I would be able to run the company to keep it from going under. That was the reason for taking the objects in the first place.

THE COURT: I'm not going to admit the letter if it's a letter addressed to him personally that you located on some premises, but it was not addressed to the corporation.

Let me ask you something, Mr. Partain. The premises that you said that you had possession of and then gave him notice of termination. And then you said that he changed the locks and effectively, I think you used the words, "broke into the business" and then placed a security guard. What

dates did those happen, and what dates – and whose premises were they?

MR. PARTAIN: The turnover order occurred on January 27th, 2005. In January 29th, 2005, I arrived at Global Limo office on Jackson, 1708 Jackson Road, and I had the police with me at the time. I had an order in front of me. Mr. Maples, I don't believe was there at the office at the time, but he came in later. He was warned at that time not to trespass and he was given a copy of the order. He didn't want to ready the order though, because he was insisting that he be served to by sheriffs.

THE COURT: Okay, but that was at Global Limo's office?

MR. PARTAIN: Yes, Your Honor.

THE COURT: Now, the allegation in the temporary restraining order is that whatever Global Limo had, whether it's its office or its buses or whatever, because the charter lapsed, but under Texas law, beneficial interest in that passed upon the lapse of the charter up to Mr. McKinnis' client, the Maples. Tell me why that argument is incorrect?

MR. PARTAIN: Your Honor, what happened was Global Limo lost its charter back in June 16th of 2004. When you lose a charter, it means that you lose the ability to sue and protect yourself against lawsuit in the State of Texas. It doesn't necessarily mean that the corporation does not exist. I do have a citation here. It's in Arlene Perry [sp.ph], the citation is 325 F.3d. 303. And what it says – Let me read it.

THE COURT: Actually, if you'll hold a minute, I'll read it myself. Hold on.

MR. PARTAIN: Okay.

(Pause – Judge reading citation)

THE COURT: Can you tell me what portion of that case you're reading?

MR. PARTAIN: Yes, Your Honor. Let me find it. It would be Part 22 of corporations not considered defunct or

dead until dissolved. And that's also under Lowe [sp.ph] versus Farm Credit Bank of Texas, 2 S.W.3d. Part 293 and 297. The only way Texas law provides for voluntary dissolution only through execution defined in Articles of Dissolution of the Secretary of State

Although the Secretary of State could order a dissolution, that never occurred.

(Pause)

THE COURT: All right, go ahead, sir.

MR. PARTAIN: Thank you, Your Honor. There are some other allegations that are here. I don't really know that they will present any evidence, but they're claiming I've got thousands of dollars worth of checks located at my home.

I've got one check, but my home address is actually the corporation address as provided to the Secretary of Sate. So, it would actually be a corporation that would be a more correct to consider my debt.

As far as the collateral that Texas State Bank is claiming, it should be noted that Mr. Maples took out a loan back on July 15th of 2004, after the corporation charger was forfeited. So, he's actually personally liable for that. That was for $135,000 for two notes that hadn't been paid off yet. They were consolidated into one.

On August, and I don't know the exact date, he also took out another loan for, I think it was around 50 - $53,000, which he defaulted, supposedly on January 21st, 2005, which is a third note that they're complaining about that is in default right now.

Now, the third not is really interesting because the third note takes out all the equity in the house that been owned by Global Limo to begin with, and that was transferred under the guise of working capital for Global Limo, too a trust account or an escrow account under a trust name in Mount Vernon, Texas, which as far as I can tell, Your Honor everything looks like embezzlement and fraudulent conveyance. So Mr. –

THE COURT: I'm sorry, I didn't hear. Hold on. Did somebody raise an objection? I didn't hear it.

MR. MCKINNIS: Your Honor, just for purposes – We object to Mr. Partain's characterization of the transaction was embezzlement for the purchase of a home that's been scheduled on the – by the debtor in the bankruptcy.

THE COURT: Overruled, its argument.

Go ahead Mr. Partain.

MR. PARTAIN: Okay, Your Honor, and it seems like the only thing that's stopping us from going forward right now is the fact that Texas State Bank claims that they've got a lien on this house, although the actual house was transferred to my family name before Texas State Bank actually made any claim to it in the County records.

So, that's where we're at right now. If the Court is looking at returning the business to Mr. Maples, I don't really see any reason form him, what's to prevent him to cause other fraudulent conveyances, or cover the business in any other was.

And – Let's see. At the moment, I have no more.

THE COURT: Okay.

MR. PARTAIN: However, Your Honor, let me come back one more time.

THE COURT: Okay.

MR. PARTAIN: I do have a disbursement authorization. This is from Texas State Bank. This was fro a note, the number is -- the number is 141359. It's for an amount of $47,000. I believe, if I read Mr. Maples affidavit correctly or in the brief that was actually prepared for this Court, Mr. Maples' was claiming the value on this house was $75,000. Now, the house, according to the County records really was only appraised at around 47 to $52,000. I think it was $52,000 the last time the County went back to appraise it. But, I also have another piece of evidence that I'd like to go ahead and enter. That there's a house right next door to it being offered at $41,500, which is quite a

discrepancy off the value that Mr. Maples is claiming against my taking –

THE COURT: Go ahead.

MR. PARTAIN: Independent – Okay, Your Honor.

THE COURT: No, go ahead and finish. Go ahead and finish.

MR. PARTAIN: Oh, okay. Well, I don't have Mr. McKinnis' brief in front of me, but I do recall that there was a lot of inflated values in there and a lot of allegations. And what I'm trying to show the Court is that these allegations are not necessarily true. And unless the plaintiff can bring forth some kind of evidence to prove what he's talking about, I will go ahead and motion the Court to just strike all that, strike all the allegations.

THE COURT: I'm not going to strike the allegations. I'm going to try and figure out what to do with your allegations you are making, the allegations he's making.

Mr. Partain on the – You told me that on the 27th, you got the turnover order. That on the 29th, you arrived at Global Limo's office. I need to carry those dates forward, and I want to understand you side of – You had indicated to me earlier that Mr. Maples showed up at the business and changed the locks back and posed a security guard. I want to find out dates when that happened compared to the bankruptcy case.

So, all I know so far is the 27th, according to you, you got the turnover order from state court. The 29th you arrived and delivered it at Global Limo's office. What happened next?

MR. PARTAIN: It was on the 30th, Your Honor, that Mr. Maples returned and changed the locks. Oh, in fact, I do have a piece of evidence here that – it's a copy of a letter that he stuck – that he put on the door, I think to prevent the lacks from being changed again. Whet it says is: "Notice. No locks can be changed." It's got a date on top of it of January 30th, 2005.

THE COURT: So he shows up on the 30th, and then what happens next?

MR. PARTAIN: Well, I went to the place to have him evicted, and the police didn't want to get involved because it was a civil matter.

THE COURT: Okay. What happened next?

MR. PARTAIN: Well, I went to the DA with the same problem. The DA said it's a civil matter. The judge will handle it.

THE COURT: Right.

MR. PARTAIN: So, I entered – I think it was a cause why or cause show why motion into the court, because Mr. Maples had been ordered by the court to turn over three pages worth of documents, the corporate books and all corporate records to the court, and Mr. Maples, of course, did not do it. And so Mr. Maples should have been in contempt of court. And I was trying to have contempt charges against him at the time that he filed the bankruptcy.

THE COURT: So on January 30th, he comes back into the place and changes the locks. Who had possession of the premises on the date the bankruptcy was filed on February the 16th?

MR. PARTAIN: Of the premises? The actual office, Your Honor?

THE COURT: Who had possession, physical possession on that date?

MR. PARTAIN: That would be Mr. Maples, Your Honor.

THE COURT: Okay. Anybody want to respond to anything that Mr. Partain has had to say?

MR. MCKINNIS: Your Honor, Kelly McKinnis, briefly. I would note that the chronology on February 1st, 2005, it's my understanding that the state court entered a stay order regarding several of the matters pending before it regarding the struggles in the matter.

I would also note that Mr. Maples is present and ready to testify that the lease on the business premises at 1708 North Jackson, in an ironic twist, is actually in his individual name. So Mr. Maples is being – trying to be evicted from the premises where he's the leasing party on the lease. That is where the Global Limo, Inc. does business and is operated out of. As a technical point, the lease, to my understanding actually is in the name of James Maples, the plaintiff.

The other thing, Your Honor, I think it is simply rabbit trails. We've got a real basic situation here that this gentleman did not respect the automatic stay of the Bankruptcy Code. And Mr. Partain has seized the assets after the filing of the bankruptcy in total disregard for the operation of bankruptcy laws. Global Limo, Inc. did not exist.

The franchise had been forfeited in June of 2004. So at that point in time, Mr. and Mrs. Maples, the plaintiffs became the beneficial owner of all rights in that entity. And for the – for Mr. Partain to come in after the bankruptcy's filed and started seizing assets, we believe it's highly improper, and warranting the Court to issue a temporary restraining order to stop this conduct, Your Honor.

MR. PARTAIN: Your Honor, I would like to make a response, please?

THE COURT: Yes sir.

MR. PARTAIN: We've already had three emergency hearings on this, previous to this. And they already made the same arguments as far as my violation of the stay, being a core issue under the jurisdiction of this Court. And it has not been determined that Mr. Maples is actually an owner of these asset that falls under the bankruptcy estate.

In fact, I've got a court order that show that it's actually my estate. And therefore, I am not in breach of any stay – automatic stay.

Also – And if Mr. Maples turned over the papers as the Court had demanded him to do back in January, there would not be any discussion as far as to who the lease of certain properties is under – if they actually are in his name – but I do have a checkbook which shows that Global Limo, Incorporated pays the lease.

THE COURT: I want to understand the stay order. Mr. McKinnis is telling me that on February 1st of '05, the state court stayed its January 27th order, or part of it anyway?

MR. PARTAIN: Not exactly, Your Honor. Actually, what happened was that Mr. Maples hired another lawyer. I think his name was Corkrn[sp.ph.], Mr. Corkren. And Mr. Corkren had approached the secretaries in the judge's office and ahd a judgment stamped. The court was not aware of that happening. And I immediately had it reversed as soon as I found out that there was a stay order stamped.

THE COURT: When was it reversed?

MR. PARTAIN: It was reversed like three or four days later.

MS. SKAGGS: Your Honor, it was reversed February 11th of 2005.

MR. PARTAIN: It was reversed whenever I found about the order, Your Honor.

THE COURT: Okay. So there was a stay of the January 27th order entered on February 1st. And then that stay itself was terminated on February the 11th, and the bankruptcy case was filed on February 16th, right? Do I have my dates right?

MR. PARTAIN: That sounds about right, Your Honor.

THE COURT: Mr. –

MS. SKAGGS: I'm sorry, Your Honor, I mis-stated. It was February 4th. There was a – On February 11rh, the County Court denied Maples' motion to reconsider the issuance of the turnover order, and further hearing was set for February 16th.

Your Honor, do you have a copy of the turnover order in you –

(Pause)

MR. MCKINNIS: Your Honor, there's (indiscernible) under the exhibit.

THE COURT: It's an exhibit to what?

MR. MCKINNIS: If not – Your Honor, if the Court doesn't have access to it, it would be here, because I have the exhibit right here. Exhibit #1 is the turnover order. I gave a copy to Mr. Partain.

THE COURT: Was it filed in the main case, Mr. McKinnis?

MR. MCKINNIS: Yes, it is. It's an exhibit to Ms. Skaggs' brief.

MS. SKAGGS: Your Honor, we filed a brief with the Court regarding (indiscernible) turnover. It's Bankruptcy 05-70128.

THE COURT: Hold on just a second.

MS. SKAGGS: And our –

THE COURT: Hold on, hold on, I'm not that fast.

(Judge speaks to attorneys on another case)

THE COURT: All right, what's the case number, please, Ms. Skaggs?

MS. SKAGGS: Your Honor, it is the underlying case of 05-70128. And it is Exhibit #B to our motion. And our brief was docket No. 20.

THE COURT: 20?

MS. SKAGGS: Yes, Your Honor. It's Exhibit #B.

THE COURT: All right, I've got it.

MS. SKAGGS: And Your Honor, in our brief, you will see the Fifth Circuit case that we cite3 to that provides – that review Texas law. It's the *Resolution Trust Corporation versus Smith*, 53 Fd.3d. 72 at pages 77 and 78, and it talks about the Texas Turnover Statute. And it says the statute is purely procedure in nature. And it does not provide for the termination of substantive rights of the parties and the parties of a turnover proceedings to determine whether an asset is in the possession or subject

to the control of the debtor, but it cannot pass title, Your Honor. And the turnover order provided that the title – that the stock was to be turned over to the County Clerk. Then it goes further –

THE COURT: Hold on, I'm reading – Hold on, let me read the order.

MS. SKAGGS: Okay, I'm sorry, Your Honor.

THE COURT: That's okay.

(Pause – Judge reading order)

THE COURT: All right. Go ahead, ma'am. I've read the order.

MS. SKAGGS: Okay. Your Honor, it is the position, I understand of the debtor, and of the bank to maintain the status quo and the business functioning, is that this turnover order goes one step too far than what is permitted under state law under the procedural rules. And that is, it awards the title to the debtor.

And in fact, under the procedural rules of Texas, Your Honor, the stock – it is appropriate to turn it over to the County Clerk, but the County Clerk then is the one that if it is to be sold pursuant to a judicial foreclosure, Your Honor, and then the proceeds of that to be applied to the judgment. And that is not what is done. It did take it one step further. There are other turnover order entered in this case that does not take that further step. And it is basis of an alternative argument, Your Honor, whether it be as a loss to the corporate franchise status. And I do not – I don't want to leave the Court down a rabbit trail, but I do want the Court to be aware, this is an alternative argument that's being presented. And this is fact what will be appealed, I understand, on the state court ruling. This very turnover order will be appealed.

THE COURT: Okay. Let me look at a couple of other things.

(Pause)

MS. SKAGGS: Your Honor, our argument is on Page 3, 4 and 5 of our brief.

THE COURT: All right. I want to hear arguments from the parties on how to reconcile the language in the *Perry* case cited by Mr. Partain with the *Edwin* case cited by the Maples with respect to whether the failure to pay the franchise taxes give beneficial owner of the underlying – property to the shareholders.

MR. MCKINNIS: Your Honor, I'm at a disadvantage because I don't have a copy of the *Perry* case. The defendant –

THE COURT: Let me just read to the language – Unless, is there a copy of that there in court with you, Mr. Partain?

MR. PARTAIN: Yes, Your Honor.

THE COURT: Why don't you give a copy then to Mr. McKinnis. Mr. Partain, do you have a copy of the *Edwin* case that you can review?

MR. PARTAIN: Yes, Your Honor.

THE COURT: Okay, I'm going to let you all read each others case law, and then I want to hear argument on how to apply that law to the facts of this case.

MR. PARTAIN: While he's reading that, Your Honor, I can over the *Edwin* case. I did read that. I read that for a minute befor I got here.

THE COURT: Well why don't you take more than a minute. I want him to hear your argument, and I want your to hear his.

(Pause for counsel to read cases)

THE COURT: Let me tell you all as you're reading it, at least how I reconciled the two cases, and then I want to hear argument as to why my reconciliation of the two cases is incorrect.

I read *Perry* as saying that legal title to assets remain in the name of the defaulted corporation – rather should remain in the name of the corporation that failed to pay its

franchise taxes and resulted in a forfeiture of the charter – period. Therefore, the corporation still had legal title.

And I read the *Edwin* case as agreeing with that concept that legal title would remain with the corporation, but that under Texas law the beneficial title to the assets is with the shareholders. So I'm not sure the two cases aren't consistent, and I want to hear an argument as to whether anyone disagrees with that position.

MR. PARTAIN: Your Honor, I'll start first.

THE COURT: Go ahead.

MR. PARTAIN: Actually, they are consistent. What the *Edwin* case was trying to say was that because the corporation was at default, or was -- indeed lost its charter that the shareholder do not necessarily have an ability to sue or be protected by the corporation. And what they were saying was that they do have a property interest in this corporation so they should have the right to be able to protect their property interest by suing on the – for the property interest, but not necessarily for the corporation.

THE COURT: Okay.

MR. PARTAIN: That was the *E*dwin case.

MR. MCKINNIS: Your Honor, I don't believe the cases are inconsistent. I think it's just the way your read the. As is set forth, the beneficial – that the shareholders become beneficial owners of the assets, but the legal ownership stays with the corporation. The corporation is still out there in a very strange forfeited franchise sense. But the fact is, and our position is, that the debtors, once the corporation lapsed, became the beneficial owner of the assets.

THE COURT: Okay. Here's what we're going to do. We're going to issue the temporary restraining order. Let me give you the reasons why.

The Fifth Circuit has set out a four-part test to determine whether a temporary restringing should be

issued. And I'm referring to the common test that we're all familiar with the for reference the *Guy Carpenter & Company versus Provenzali* case at 334 F.3d. 59, Fifth Circuit 2003 establishes the four-part test.

The first is substantial likelihood of success on the merits. Substantial likelihood of success on the merits doesn't mean that the plaintiff is even more likely to win than the defendant. It simply means that there is a real and probable chance that the plaintiff is stating a good faith case and has merit to the case. We find the plaintiff in fact does have merit to the case. And in fact, stands a real and likely chance of winning the case.

The reason for that is that the automatic stay under the Bankruptcy Code prohibits any party from removing a debtor from possession of assets. It's not just assets that the debtor might own, but debtor assets of which the debtor is in possession. So, there really isn't any dispute here today, according to anybody's version of the facts, that as of the date of the bankruptcy petition, the debtor was in possession of Global's assets.

The part for the Court, frankly, in dealing with that and the reason we asked all the questions, and I'm going to skip to the fourth question, is whether or not the injunction undermines the public interest. We're concerned about that test. The concern is that we had a state court turnover order, and we would not issue our injunction that would in any way authorize anyone to violate a state court turnover order. The state court turnover order as we read it – after consideration of the order, as will as, the two cases cited by the parties – only orders the turnover of the shares and not of the underlying assets of the corporation. Under the terms of that order, there was no violation of the order because the shares had very little right and value to them at the point when the forfeiture had occurred.

I think it's a close call, and we're concerned about the public policy issue. But I do reconcile the cases as the way that I indicated, which is that once the charter is forfeited,

the right to possess the assets goes to the shareholders. It appears that the relief obtained in state court by the Partains wasn't the relief that the Partains really want to obtain. And the Maples basically looked at that, and I think, properly exercised their rights to remain in possession of the property.

Nevertheless, with respect to the forth factor, I find – because in the vent that I'm wrong about this, that it does undermine the public interest, I find the public interest factor weighs in favor of the defendant, not in favor of the plaintiff.

Number two is a substantial threat of irreparable harm if the injunction is not granted. I find that there is a substantial threat of irreparable harm if the injunction is not granted. The debtors had a right to possess the assets. Mr. Partain is, in fact – from the argument that everyone makes, and even Mr. Partain's argument – his intent is to disrupt the debtor's ability to run this business. He wants to run it himself. I understand why he wants to run it himself. But the whole idea is effectively one that obviously causes irreparable injury because the Maples don't get to run the business.

Number three, is that the threat and injury to movant outweighs any harm to the non-movant that may result from the injunction. That is a matter that is in equilibrium. We think that either party is going to be injured one way or the other. And we're going to need to impose adequate safeguards to assure that the Maples, when they regain possession of assets, do not undertake any action that would injure Mr. Partain's rights.

And finally, back to the injunction will not undermine the public interest, we do find there is a countervailing public interest, which is there isn't any question in our mind that Mr. Partain violated the Bankruptcy Code when he continued to attempt to obtain possession of assets in violation of Section 362 of the Bankruptcy Code. Of which the Maples were in possession. That counterbalances to

some extent our overall public concern of when there was violation of the first state court order.

So, basically what I've got is two parties without clean hands. One of whom, I think, probably didn't, but might have violated a state court order. One of whom plainly violated a federal court order. Those deal with the public interest. And although I find it probably weighs in Mr. Partain's favor, not as much as the other factors weight in favor of Mr. Maples.

We're therefore going to issue the restraining order. We're going to require that all of Global's assets be returned to the Maples for their control. We're going to order that the mail that has been transferred to Mr. Partain should, in fact, be terminated and should be transferred back to the Maples. We're going to order that the maples are enjoined and prohibited from using these assets other than in the ordinary course of business or from transferring them in any manner.

We're going to order that Mr. Partain be given full access to the books and records of the company. He is to be provided on a weekly basis with all financial results of the company, not less than three days old. In other words, by Friday of every week. He needs to be given all the checks that are issued and all the receipts that are received by the prior Tuesday. If there is any attempt to sell any assets through the bankruptcy court, notice must be given to Mr. Partain, and that notice must be reasonable under the circumstances so that any sale could occur. If sale does occur of any of the assets prior to the termination of this temporary restraining order, 100 percent of the proceeds are to be held in escrow, pending a determination of Mr. Partain's rights to those proceeds.

That's going to be our order. What I want to hear now from the parties is whether this order in any way fails to protect the parties' rights in their assets?

MR. MCKINNIS: Your Honor, there is an issue of the condominium that owned by – was titled in the name of

Global Limo, Inc. – that Mr. Partain, on behalf of Global Limo, Inc. had transferred to himself. And I think that we were accountable to the bank for that collateral. And I guess I didn't quite – I don't think your orders thus far said anything about that particular piece of property.

THE COURT: I didn't deal with the condo, and I should have. With respect to the condo, I want there to be a recorded instrument placed in the title records that says there can be no further transfers or encumbrances of the condominium. There's no reason to transfer title back to Mr. Maples at this point. There's nothing urgent going on. At the point when one party or the other wants to sell the condo, and before final relief has been entered, that party can file for relief and the proceeds are going to be held pending the outcome. So let's just – We're going to cloud the title with our own lis pendens.

MR. PARTAIN: Your Honor, there's also an issue about the $47,000 that was transferred to an escrow account for Mr. Maples. That would be for that condo. I suggest that it be returned to the corporation since it was a corporation working capital.

MR. MCKINNIES: Your Honor, my understanding is that money was used as a down payment for property bought in Mount Vernon, Texas, which is under the supervision of the bankruptcy court. It's scheduled on our Schedule A and, of course, we cannot sell it or do anything with it.

THE COURT: When did that 47,000 arise?

MR. MCKINNIS: When did the $47,000 – I think it was a down payment for the Mont Vernon property. The $47,000, when did you do that?

MR. MAPLES: Actually, I made the transaction the first part of January.

MR. MCKINNIS: The month of January, Your Honor. He says early January when it was commenced and it completed towards the latter part of January.

THE COURT: And the $47,000 has already been spent?

MR. MCKINNIS: It went into the house, right?

MR. MAPLES: Right.

MR. MCKINNIS: Yes, your Honor, there was a real estate purchase in Mount Vernon, Texas, and that was used as a down payment. And that's scheduled on Schedule A of the bankruptcy.

THE COURT: We're going to cloud the title to that as well. I don't want any transfers to be made of that property as well. Same thing.

The fact that the bankruptcy could potentially get dismissed; it wouldn't protect Mr. Partain's rights. I don't want the case dismissed and then that real estate sold somehow. So, until a court rules finally on what Mr. Partain's rights are versus Mr. Maples' and Ms. Maples' rights, I don't want there to be anymore transfers of property that might be linked to this. So, I want the same order issued or the same lis pendens issued against both properties. The title is not to be transferred, sold or encumbered, without further order of this Court.

I'll let you all – I'm going to let you and Mr. Partain agree on the form of how to – on how to create that lis pendens so that it adequately protect both parties' interests in those properties. We're going to do our own TRO that will require you all to agree on a form. If you can't agree on the form, we'll do one. But I think you all can probably do a better job by identifying the properties than we could do.

MR. MCKINNIS: So, Your Honor, to make sure I understand clearly, you'd like for Mr. Partain and I to see if we can reach agreement as to the form of the lis pendens of each of the two properties, the condominium and the Mount Vernon property?

THE COURT: They ought to be identical. Right.

MR. MCKINNIS: The court itself is going to draft the TRO?

THE COURT: Right. We're going to issue the TRO within the next few minutes.

MR. MCKINNIS: Very will.

THE COURT: And we'll do that. The TRO will include as protective measures the requirement of the lis pendens. It's only if you all can't agree on a form. I want you all to come back.

Is there any other –

MS. SKAGGS: Your Honor?

THE COURT: Yes, ma'am.

MS SKAGGS: I did have one further clarification. As to the banking accounts, on the records on the banking accounts or records of the notes –

THE COURT: All those records are to be – All those records are to be returned to Mr. Maples.

MS. SKAGGS: But I'm saying as to the future right to review and get copies of the bank statements from the banks specifically, and come to the bank and request this information by Mr. Partain. Does he have the right, or – We're caught here in the middle.

THE COURT: Mr. Maples is the only one that has that right, but I'm requiring Mr. Maples, after he exercises that right on regular basis, and to provide that information to Mr. Partain. But I don't want the bank having mixed masters.

MS. SKAGGS: Thank you. And Your Honor, Mr. Maples has sole right to sign checks, and the bank doesn't have to pre-approve the checks?

THE COURT: Mr. Maples has the sole right to sign the checks. The bank doesn't have to pre-approve the checks. If Maples issues a check that is not in the ordinary course of business, and is not done in furtherance of the business of Global, he's going to be contempt of this Court. He is required to operate the business only in the ordinary course. I don't want there to be any ambiguity about that. But the bank doesn't have to monitor. If he issues checks that are done not for Global's purposes, Mr. Partain is going to have the right to come back. We'll issue a show cause order. And it's going to Mr. Maples' burden to prove

that everything he's done is in the interest of Global, and in the ordinary course.

MS. SKAGGS: Okay. Your Honor, also that is not just checks, but transferring into accounts and wire transferring monies outside? It that correct?

THE COURT: Basically, what I'm saying is, he can run the business. The bank doesn't need to monitor it. If he messes up, he'll be reporting to me.

MR. MCKINNIS: Your Honor, if I could ask for one clarification. Does Mr. Maples have the exclusive right and physical possession of business premises?

THE COURT: He has the exclusive physical possession of the business premises, but he must provide accounting I've required to be provided to Mr. Partain.

MR. MCKINNIS: We have no problem with giving reports to Mr. Partain, but I just wanted to be clear that Mr. Partain is not supposed to show up on the premises and hover around. Is that correct?

THE COURT: He is not. He has exclusive right to the premises. I want you to explain to Mr. Maples very clearly, Mr. McKinnis, what I mean by ordinary course. It's going to be a stringent standard.

MR. MCKINNIS: We will be very clear about that, Your Honor.

THE COURT: Okay.

MR. PARTAIN: I was going to go ahead and make – bring that up, Your Honor, about the ordinary course. Mr. Maples has shown that he wants to go ahead and buy five more coaches or – no, nine more coaches in the next three years. I don't really see where he may consider that the ordinary course of business. But –

THE COURT: Well –

MR. PARTAIN: He's been prone to leveraging his assets as far as he can go in trying to make a profit.

THE COURT: Okay, but this order is only good for 10 days. At the expiration of 10 days, we're going to have a

full evidentiary hearing. And at that hearing, we're going to determine more detail. So, this is a pretty limited scope.

Although, Mr. Partain, a lot of times what happens is if things have gone smoothly for the 10 days, and if the evidence pretty well the same thing that the argument showed at this hearing, at that point, similar orders get issued, just so that you know what happens. There's then a final hearing, and that final hearing is a full blown trial. At that full blown trial, we determine the final rights of the parties on full legal briefing.

So, this is basically an argument-only hearing. There will then be an interim evidentiary hearing. And as I indicated, it's common to basically extend these kind of protective terms for awhile. I'm not telling we'll do that, but I know you're pro se and I want you familiar with what happens a lot. There's then a final full hearing, and what we do at these first two hearings really has nothing to do with what we do at the final full hearing. That's after discovery, full evidence, full argument, and we could completely reverse course.

MR. PARTAIN: I understand, Your Honor. After about a year of litigation, so I'm kind of familiar with how it works now.

THE COURT: Are you an attorney, sir?

MR. PARTAIN: No, Your Honor, I fired two attorneys because of conflicts of interest in this case.

So unfortunately, it becomes very expensive to keep paying retainer fees to keep fighting this in different courts and different venues. And so I've had to learn how to do it myself.

THE COURT: All right.

MR. PARTAIN: The other thing I'd like to bring up, though, is that because I've been chasing Mr. Maples for eight years, he has used a lot of different names. He's run a lot of different businesses out of the same premises, which is why this is a messed up affair. And I think it needs to be

placed in that order also that he may only run Global Limo, Inc. and no other businesses out of that location.

THE COURT: no, we're not going to do that, not for this 10-day order. If there's evidence that he's mis-using the premises and mis-using the assets of Global, we'll take that up with the preliminary injunction hearing.

We're going to continue this hearing to another video hearing for preliminary injunction. That will be on April the 8th at 3:30p.m.

We're then going to set a McAllen hearing, which is really going to then set forth all the discovery deadlines and other deadlines that are going to take place in the case. It will be a status conference in the Adversary Proceeding.

You're not required to answer this by that date, Mr. Partain, but life will be easier on me, and frankly on everybody if we have an answer in place from you so we can go ahead and set discovery deadlines at that hearing and get, you know a full trial schedule put into place. So, again, I'm not going to require you to answer by that date. If you choose to, it's just going to reduce everybody's burden including yours.

That hearing will be, in any event, a status hearing where we hope to set pretrial orders, and it will take place in McAllen at 4:30 on April 18th. And I'll be in McAllen, and that way we can all maybe work through what the right procedures are.

MR. PARTAIN: That's 4:30, Your Honor?

THE COURT: Yes, sir.

Any other questions about what we're doing?

MR. MCKINNIS: No, Your Honor.

THE COURT: Anybody believe that their interests aren't being adequately protected by this order?

MR. PARTAIN: I have some, Your Honor.

THE COURT: Pardon me?

MR. PARTAIN: I don't believe that my interests as a corporate owner are being protected here.

THE COURT: Okay. And in what way are your interests not being adequately protected?

MR. PARTAIN: Well, Your Honor, I think I proved conclusively to the Court that Mr. Maples has defrauded me on many occasions. In fact, my lawsuit was based on fraud in the first place. And I think the Court handing the corporation over to him to run a corporation based on the guise that maybe he's more qualified, maybe that he'll do it right or honorably this time, I think it's misplaced.

THE COURT: Okay. We're not doing it because we find he's going to run it better. We're not doing it because we find he's honest or dishonest. We're doing it because we find that the automatic stay allowed him to retain possession or the property as the principal issue that's before the Court. And we're not making any of the findings that you're suggesting. We won't make those until we hear evidence. So –

MR. MCKINNIS: Your Honor –

THE COURT: Yes, sir, go ahead.

MR. MCKINNIS: Pardon me, Your Honor. Is the Court going to set a firm date and time when Mr. Partain will hand over all the assets of the corporation back to the plaintiff?

THE COURT: Five o' clock tomorrow.

MR. MCKINNIS: Five o' clock tomorrow?

THE COURT: Yes, sir.

MR. MCKINNIS: Thank you, Your Honor.

THE COURT: Thank you.

MR. PARTAIN: Yes, sir. Thank you.

THE COURT: Yes, sir. Thank you.

MS. SKAGGS: Thank you, Your Honor.

THE COURT: Thank you – Thank you, ma'am.

Go ahead and turn off the screen.

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Jon Thomas /s/Dana Gerard – py
Signature of Transcriber

12-21-05
Date

24629
JTT#

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION

IN RE:	§	CASE NO. 05-70128
	§	
JAMES MAPLES,	§	McALLEN, TEXAS
	§	WEDNESDAY
	§	OCTOBER 25, 2006
DEBTOR.	§	10:16 A.M. TO 10:51
	§	A.M.

DOCKET CALL MCALLEN BANKRUPTCY COURT

BEFORE THE HONORABLE RICHARD S. SCHMIDT
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

FOR DEBTOR:	SEE NEXT PAGE
FOR TRUSTEE:	SEE NEXT PAGE
COURT RECORDER:	RICHARD CORTEZ

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MCALLEN, TEXAS; WEDNESDAY, OCTOBER 25, 2006; 10:16 A.M.

THE COURT: Maples?

All right. Ms. Skaggs, who do you represent?

MS. SKAGGS: Your Honor, I represent Texas State Bank, the Respondent.

MR. PARTAIN: Johnny Partain, Creditor.

THE COURT: All right.

MR. MCINNIS: Kelly McInnis for the Debtor, Your Honor. Mr. Maples is present.

MS. JUE: I'm Barbara Jue for the U.S. Trustee.

THE COURT: All right. Now Mr. Partain, you did not show up on time.

MR. PARTAIN: Yes, Your Honor. I forgot my ID. (Indiscernible).

THE COURT: Okay. This is very important that -- you know, court hearings are important and they need to be you need to find a way to be here on time.

All right. Go ahead. Who -- what do we have?

MR. PARTAIN: We have a hearing set for Objections to Claims Number 4, 5, 6, and 7 from Texas State Bank.

THE COURT: All right. What are the claims to your objections?

MR. PARTAIN: Let's see.

MR. MCINNIS: Just for the Court's information, it's also a Motion to Convert the case that the Trustee has filed.

THE COURT: Okay.

MR. PARTAIN: We submitted objections to Texas State Bank (indecipherable) $5,234.82 against Global Limo. Claim Number 5 would be for $60,909.10 against -- actually these claims are claims against James Maples after he filed bankruptcy and they were actually a debt owed by Global Limo.

I've also got a Claim Number 6 for $47,590.11, and Claim Number 7 is just $182,481.27.

THE COURT: All right.

MR. PARTAIN: Now the last time we were here, I believe, that I gave evidence and objection to Claim Number 4. I don't know if you want to go over the evidence in that.

MS. SKAGGS: Your Honor, you've already ruled on that and denied that objection. And this is just the same objection again. We heard on July 26th. The Court ruled on September 12th --

THE COURT: Has there been an order?

MS. SKAGGS: -- denying the objection.

MR. PARTAIN: Your Honor, I believe that after I resubmitted

THE COURT: That was what?

MR. PARTAIN: I believe that ruling was placed after I resubmitted the argument of plaintiff. We never did have our closing arguments in that. All we did was take evidence.

MS. SKAGGS: Your Honor, you asked if there was anything else and said you would rule.

Your Honor, I would also point out

MR. PARTAIN: I can only assume by the order, Judge, that as I had already resubmitted Claim Number 4, the objection pending (indecipherable) by the Court.

MS. SKAGGS: Your Honor, you heard evidence. We concluded and finalized our evidence. The Court stated it would rule. The basis for all four -- the objections to all four claims was on 502(e)(1)(B), which is the claim for reimbursement or contribution which is inapplicable in this situation, Your Honor, and this Court clearly ruled that. It was -- and this Court recognized that at the time of the hearing and has made the ruling since.

That's the claim for reimbursement. It's your liable with the Debtor on a claim and it's contingent at the time.

MR. PARTAIN: I don't believe that the Court actually made that decision and --

THE COURT: Okay. Well, let's start. This is a 502(e) --

MS. SKAGGS: (1)(B).

THE COURT: -- (1)(B) claim, a claim for reimbursement.

MS. SKAGGS: And a claim for reimbursement --

THE COURT: "Notwithstanding, blah, blah, of this section, the Court should disallow any claim for reimbursement or contribution of an entity that is liable with the debtor on or has a secured claim of the creditor to the extent that such claim for reimbursement or contribution is contingent as to the time of the allowance or disallowance of such claim for such reimbursement or contribution."

MS. SKAGGS: His claim is that Texas State Bank is liable to Global Limo for all of his claims that Judge Isgur has entered an order against, as well as the claims as far as for the Global Limo bus wreck and that was the evidence that this Court heard, as well as the evidence proving up pricing all the notes.

THE COURT: All right. So did we argue that at that hearing that she's talking about?

MR. PARTAIN: We concluded the evidence, but we never had our closing arguments basically at the time --

MS. SKAGGS: Yes, we did, Your Honor.

THE COURT: Okay. Well, what argument do you have to add then? Go ahead.

MR. PARTAIN: Well, Your Honor, there's actually a few things. First of all, Global Limo, Inc., actually had debts (indecipherable) went bankrupt. Texas State Bank claimed the debts (indecipherable) against Mr. Maples and these were actually post petition debts that he acquired after his default to Global Limo after Texas State Bank got involved in the -- of his company and quickly took charge of the operating company. That would be one of my arguments there.

The other thing is that for 11 U.S.C. 502(e) to work, there has to a plan for reimbursement and it should have that (indecipherable) for 5, 6, and 7 from Texas State Bank. And they have -- there has to be a claim that the Debtor is liable under -- and other creditors liable to the debtor. This is in reference to Austin Airlines, Incorporated. I've already presented -- or filed a petition against -- I'm sorry. I filed a Counterclaim against Texas State Bank for Mr. Maples and (indecipherable) an injunction preventing him from operating the company. That is still pending.

Because that is still pending, that comes to Part Number 3 where the claim must be contingent at the time of the allowance or disallowance. Unless Texas State Bank

THE COURT: How is that still pending?

MR. PARTAIN: It's still pending because I have it appeals. Hopefully that's in the Fifth Circuit right now sitting in Judge Crane's courtroom.

MS. SKAGGS: Your Honor, there is no stay pending appeal.

THE COURT: Okay. Anything further?

MR. PARTAIN: Well, I think in response to Texas State Bank that claimed that because there was an order from Judge Isgur that was claiming that -- or ordering that

corporation was going to go into the bankruptcy estate for James Maples, that this, I guess, repleted the claim pertaining to (e). The order actually supports the claim because it proves that there actually was a claim against Texas State Bank for the fraud and negligence and dispersions of the bankruptcy claim to the Court.

Because the case is still being litigation, it's still up for appeals, it still conforms to 501(e)(1)(B) and I think what Texas State Bank was planning at one time, Judge, was that because the Court had ordered also that my request for Trustee to replace (indecipherable) because this Court denied it that somehow that that equitable decision of this Court beats, I guess, the requirements about all the Court is going to disallow Texas State Bank claims. They're apples and oranges. They're not the same things.

MS. SKAGGS: Your Honor, if I may respond? I'm not sure how to respond to what he says our argument is because that's not what our argument is. Your Honor, our argument is this Court has previously submitted the order on September 12th finding that this provision is inapplicable. He is trying to re litigate the objection that we've already this Court has already entered an order on and his collateral is stopped on the three other objections based on this order because again it follows the same basis that it's a claim for reimbursement for contribution.

All -- as with the first one, which was $105,000 secured in all the buses, Your Honor, we did the tracing of that which went back to 1995. I don't know if the Court remembers the voluminous objections, but the three other objections were also all -- I mean, three other claims were also all guaranteed by Mr. Maples -- two of them were guaranteed by Mr. Maples. The third one is for his homestead. It's purchase money for his homestead. The $187,000 one is the purchase for his homestead. The 50 -- excuse me, the $57,000 one, I believe --

MS. JUE: 52.

MS. SKAGGS: -- $52,000 one, Your Honor, we've got -- it's purchase money for bus, for two van pools and the sixth one was monies that was lent to Mr. Maples that was used -- that was lent to Global Limo and the collateral was what's been referred to as common, Your Honor, it's $47,000.

MR. PARTAIN: Your Honor, these claims of Texas State Bank, they go back and show the history of how these liens belong to Mr. Maples or to Global Limo. But Global Limo or Texas State Bank had notice at the time that I was litigating with Mr. Maples and they had notice after the Judgment that there was a Judgment and that because of this, under Texas Uniform Fraudulent Transfer Act, Texas State Bank actually doesn't have a valid lien.

And that was one of the things I was trying to show when the Vice President was up on the stand. I never could get to argue that point because what she has shown was that there had been two or three loans on the same property that could have been depreciated two or three times and the value was actually down to zero. So we were still making loans to Mr. Maples, but there was no value going back to Mr. Maples or going back to the company. These were just fraudulent conveyances. And because they are fraudulent conveyances, I have filed my counterclaim against Texas State Bank. That was part of my counterclaim.

Now Judge Isgur, and I don't want to get too far into that, but Judge Isgur decided that I didn't have standing to complain about this fraudulent conveyances, but that was part of my argument and that is something that's going to be heard eventually because -- well, that's another argument, Your Honor. I don't think I need to get into the litigation of the other, unless you want to hear this.

MS. SKAGGS: Your Honor, you have also ruled that he had no standing to proceed with this fraudulent claims and I can submit copies of those order to this Court, if you'd like to have it.

Regardless of the facts, Your Honor, We're claiming collateral estoppel. If this Court wants other evidence

THE COURT: Okay. Well, let's go on to the Motion to Convert.

MS. JUE: Your Honor --

THE COURT: I will review the file on this particular matter and rule on it at a later date.

MS. JUE: All right. Your Honor, Barbara Jue for the U.S. Trustee.

Your Honor, the U.S. Trustee has been monitoring this case since the outset as is the general policy of the U.S. Trustee when there's a very active creditor participation in the case. The U.S. Trustee monitors the Debtor and allows the case to go forward in the Court and its own case with the very expensive creditor participation.

The U.S. Trustee would state in part of its Motion to Convert the case to Chapter 7 to remind the Court that this case was filed on February 16th, 2005. That at the time it was filed and I believe even today, the Debtors are individuals -- individual operators of Global Tours and Charters and Global Limo, Inc. The Debtors value the shares of stock in Global Limo, Inc. at $10,000 on their original Schedule B of the Voluntary Petition and they stated they were 100 percent shareholders sharing 50 percent Mr. and 50 percent Mrs.

The Debtor stated under oath at the creditor meeting held on April the 19th, 2006 that they filed a bankruptcy to avoid collection efforts by the Judgment/Creditor Mr. Johnny Partain. Mr. Partain was awarded $93,500 in State Court to recover a loss from the sale of a faulty bus to him by Mr. and Mrs. by Mr. Bates (phonetic).

Mr. Partain seized the business property of Global Limo, Inc. to satisfy the judgment, pursuant to a turnover order he had from State Court. The Bankruptcy Court granted the Debtor's motion to have Mr. Partain turn over the property to the Debtors since the seizure violated the automatic stay. The Debtors filed their Disclosure

Statement and Plan of Reorganization on June the 16th, 2005 at Docket Entry 63

THE COURT: It was the seizure prepetition, wasn't it?

MR. PARTAIN: Yes, Your Honor.

THE COURT: So it wasn't a violation of the automatic stay?

MS. SKAGGS: No, Your Honor. There was a seizure post petition of the bank's collateral, the buses Mr. Partain had.

THE COURT: There was that, okay.

But the seizure of the stock was pre petition?

MS. SKAGGS: Yes, Your Honor.

MS. JUE: Yes, Your Honor.

THE COURT: So the turnover of the stock

MS. JUE: Yes.

THE COURT: or the ruling with respect to that had nothing to do with the outcome?

MS. JUE: Yes, Judge.

THE COURT: Go ahead.

MS. JUE: The Debtors filed their Disclosure Statement and Plan of Reorganization on June 16th, 2005 at Dockets Numbers 63 and 4 and then they filed an Amended Disclosure Statement and Plan of Reorganization on December 7, 2005. And those are at Dockets Numbers 144 and 145.

The Debtor have been unable to confirm their Plan of Reorganization, Your Honor, and currently at the time of the U.S. Trustee preparing and filing this motion, Mr. Maples was under Indictment and being tried in Federal District Court for failure to maintain the buses that were the inventory of Global Limited, Inc.

Today I believe that that Indictment has been heard. A jury trial has been held. There's been a result in that jury trial; however, Your Honor, there still remains an issue of fines which may be placed against the Maples individually

for failure to maintain the buses in accordance with the Department of Transportation Safety Code.

Now it's doubtful that Global Limo, Inc. will survive as an ongoing business, although I have no inside information on that, Your Honor, because Global Limo, Inc. is not today and never has been in bankruptcy and therefore, the U.S. Trustee has never monitored that particular corporation. The company seems to have suffered in the rare irreparable reputation laws, but that is just speculation on the part of the U.S. Trustee.

Your Honor, the Debtors filed Monthly Operating Reports through July of 2006 and show that they have no assets remaining with which to conduct a plan of reorganization. On October 2nd, 2006 the Court lifted the stay on the Debtors remaining non-exempt property and approved an order selling the property to the lien holder in the amount due plus an additional amount to creditor fees incurred by Mr. Maples for the attorneys to assist for his federal trial.

The Debtors do not have monetary resources to fund the reorganization plan, Your Honor, and during the pendency of this case they've lost their business, they've lost their non exempt property and they face future possible financial ruin if Mr. Maples is found -- well, he was not found guilty of the charges -- all of the charges, et cetera, in court, but that was what was stated on the initial filing of this case.

Your Honor, the whole point of being in Chapter 11 is to be able to have a viable plan of reorganization. This case does -- Mr. and Mrs. Maples' individual case as debtors do not appear to be able to have a viable plan of reorganization at this time. And unless there is evidence that they can do so, the U.S. Trustee believes that it would be in the best interest of creditors to convert the case to Chapter 7.

I believe that covers the U.S. Trustee's position, Your Honor. I will say that there have been some very acrimonious statements about the monitoring by the U.S.

Trustee; however, the U.S. Trustee has not acted differently this case than it has in any other Chapter 11 case.

THE COURT: Okay. Ms. --

MR. MCINNIS: May I?

THE COURT: Sure. I was going to give you the last space. I thought I'd hear from all the creditors first, but Ms. Skaggs was the bank's attorney.

MS. SKAGGS: Your Honor, right now Mr. Maples is working with the bank to try to liquidate the buses that are remaining and there is estate tax -- ad valorem taxes that are excessive, we believe, and are going to be hopefully reduced by staying in bankruptcy. The only other concern that the bank has is I think this Court is very well aware of the ongoing State litigation. It has not been settled. The settlement

THE COURT: The ongoing what?

MS. SKAGGS: State litigation. There's ongoing State litigation. The settlement blew up. There was apparently some third party that had possibly some other insurance and was below the settlement so there is no settlement. Depositions are occurring Friday in that case.

And to that extent, that the Debtor needs to be remain involved, the bank has concerns in that matter and all parties have concerns in that matter.

THE COURT: Okay. You're worried that if it's converted to a 7, that the Debtor won't participate?

MS. SKAGGS: I'm concerned that it would affect that ongoing litigation, yes, Your Honor.

THE COURT: Doesn't your bank have a lien that receives in litigation with respect to Global Limo?

MS. SKAGGS: Yes, Your Honor. It does. That's why I'm just pointing out to this Court. I know the Court was concerned in the past because appointing a Trustee because of the ongoing litigation and that's why I was advising the Court because you were concerned with it.

THE COURT: All right. Mr. Partain?

MR. PARTAIN: Your Honor, I don't really have an opinion either way. I think it's probably too late, but this is a complex case. I think it probably falls under the complex litigation rules, I think, but at the same time, I think Mr. Maples has shown that he can take a company that's been operating for 23 years and destroy it like that.

So the only concern I have is that when you have litigation in the State Courts and part of the problem we're running into is that Mr. Maples filed a bankruptcy -- Notice of Bankruptcy for Global Limo back in January 2006 and one of the attorneys -- and I do have certified copies if you'd like to see them, Your Honor. One of the attorneys responded that he wanted it stricken because Mr. Maples was a part of the litigation, but at the same time Judge Isgur has made an order, which I still claim as ab initio, that claim that Global Limo and its assets are part of this bankruptcy and right now the U.S. Trustee has claimed that only Mr. Maples and Mrs. Maples can file bankruptcy. That's their standing. But if that's the way that the U.S. Trustee wishes to proceed, I would say go ahead and convert it. But if that's not what they wish to proceed, I don't know if you can sever out cases once you're in bankruptcy, Judge, but this is too complex to just to go one way or the other.

THE COURT: All right.

MS. SKAGGS: Your Honor, I would like to add for the bank that Mr. Maples is from my understanding attempting to liquidate what remains of Global Limo and in fact, sell Global Limo. He is proceeding with that. If this is converted to a Chapter 7, Your Honor, we know what the prices, the values of the remaining assets would be, which is minimal, with the Trustee selling or if the bank people closing --

THE COURT: Well, what makes you think that the Trustee -- I mean, the Trustee would only own the stock of Global.

MS. SKAGGS: I understand. But I think --

THE COURT: And Global Limo would still be Global Limo. Whether Mr. Maples wanted to continue to work for a company that he doesn't own, I don't know. But, I mean, he has a responsibility to maximize the assets in a bankruptcy regardless of that. So I mean, I don't know that.

I mean, the issue here is there is no chance that Global Limo is going to dig its way out of all of the liability for the bus fire. They basically had a criminal finding that the records were inappropriate or whatever. It was a misdemeanor, but a criminal finding that the records isn't that what the decision of the criminal court was?

MR. MCINNIS: It was a misdemeanor.

MS. SKAGGS: That's correct, Your Honor. It was a misdemeanor.

THE COURT: So there's almost certainly negligence in the fire. Now whether or not the fire

MR. MCINNIS: We don't believe that follows, Your Honor.

THE COURT: I haven't gotten to that point. There's a finding -- they could find negligence. Whether they can find that the negligence proximately caused the damages is another issue. And I don't know if they can find that or not. I have no idea what they can find.

But it's a sensitive case with a lot of damages and so I mean if this were a case where Global Limo had assets, they'd be settling that case. You'd be evaluating what's the likelihood on I mean, even if the likelihood of success for the Plaintiffs is 10 percent, 10 percent of multi-million dollars is still a bunch of money -

MR. MCINNIS: Yes, it is, Your Honor.

THE COURT: -- if you were going to settle. Well, you don't have anywhere near those kinds of assets in this case. There's no way for you to settle it.

MR. MCINNIS: Your Honor, if I could respond to the motion and to the Court's statements?

THE COURT: Go ahead.

MR. MCINNIS: Judge, this is a bankruptcy. Normally you come into bankruptcy. You try to pay off your creditors. We've had a long running dispute with Mr. Partain. We've had to go through litigation that lasted for quite a while. It's on appeal now. We were successful in that litigation. We had filed plans of reorganization and then we had the tragic bus fire. People died.

THE COURT: Okay.

MR. MCINNIS: Then we had the complicated fact that Mr. Maples gets indicted for felony conspiracy allegations. In the end, the jury found him not guilty of this other felony conspiracy charge and there was a finding of guilt on a misdemeanor charge regarding paperwork, which is punishable, I believe, at a Level 6 in the Sentencing Guidelines, which is eligible for probation.

We have been waiting for that criminal case to run its course, which it finally has done because we believe that Mr. Maples has a cause of action against the nursing home, against the bus bank, and against the bus manufacturers for their part in causing this tragedy, Your Honor. I have spoken with lawyers who want to go forward. As we speak, a very prominent law firm is checking their conflict list to see if they are not conflicted out, they would like to a lawsuit on behalf of Mr. Maples and Global Limo against these other entities for their part in causing this horrendous loss of life and our damages basically running this business out of business.

So to the extent that the Court believes that there are no assets, I would respectfully disagree with that. There is a huge asset in these lawsuits.

THE COURT: Well, the fire occurred post petition.

MS. SKAGGS: Yes, Your Honor.

THE COURT: So to the extent that Mr. Maples was damaged post petition -- I mean, I'm not certain why that would even be property of the estate.

MS. SKAGGS: Your Honor, but Global Limo -- he owns stock in Global Limo. If Global Limo was damaged, he still owns stock and he's a stockholder and he has --

THE COURT: Well, so the Global Limo stock might be -- that's true by conversion.

Mr. McInnis?

MR. MCINNIS: We would ask the Court not to convert us, Judge. We've had to fight through several things. We've fought through the lawsuit with Mr. Partain. We ended up prevailing at the bankruptcy court trial level. We're presently on appeal. We've already won one other appeal on a temporary injunction.

THE COURT: So if I convert it, then the portion of the lawsuit that's owned by Global Limo, notwithstanding your argument you own Global Limo --

MR. MCINNIS: It's going to go down the tubes.

THE COURT: -- would be the Trustee's lawsuit.

MR. MCINNIS: Right. And --

THE COURT: The portion of the lawsuit with respect to Mr. Maples would be Mr. Maples' lawsuit. So you would have -- it may well be that the same lawyer can represent both of you, but it would be -- there would be two sides. In essence, he'd have two masters.

MR. MCINNIS: And Your Honor, our experience when the Trustee -- when you have a Trustee getting involved, it decreases the value of the litigation. If the Court would just allow us a short period of time --

THE COURT: I'm not so sure that that's true. I mean, as a plaintiff's lawyer would you rather have the Plaintiff B man, who has already been convicted of a misdemeanor, at least, mistakes with respect to the fire or would you have the, you know, squeaky clean Trustee representing all these creditors who have been hurt?

MR. MCINNIS: And a Trustee who has not suffered one bit personally because of this great tragedy.

THE COURT: Well --

MR. MCINNIS: A Trustee who is basically has no connection --

THE COURT: I mean, your argument is that the company has suffered. What more suffering can you have than being converted to Chapter 7 because there is no prospect of reorganization? Right now your damages are less because right now you think you have prospects of reorganization. The decision by a bankruptcy court that there's no prospect of reorganization means that it's been damaged as far as it can be.

MR. MCINNIS: Judge, we would respectfully ask not to be damaged that much and we believe that we have quite a bit of damages as we are and we believe now that the time has run and Mr. Maples has got the criminal matter resolved, as far as he's not

THE COURT: Has he been --

MR. MCINNIS: He has not been sentenced yet, Your Honor, but --

THE COURT: When is that?

MR. MCINNIS: December 14, Your Honor, but he

THE COURT: What does the guidelines say with respect to that?

MR. MCINNIS: Level 6 is my understanding, which makes him eligible for probation.

THE COURT: Okay.

MR. MCINNIS: I'm not his criminal lawyer, Your Honor, but that's my understanding.

With all -- having to have to wait until we got by the felony charge, now that we've gotten by this litigation without a felony conviction, lawyers want this case, Judge, and we believe we can cooperate fully and help maximize recovery to the estate, pay off the creditors. We're working on paying off Texas State Bank as we go. Mr. Partain's claim has been litigated -- been liquidated by the Court and so we're in a position where if we're able to continue with this litigation, we'd be able to pay off Mr. Partain, get the bank straightened out, and we'd be in good shape.

THE COURT: Okay.

MR. PARTAIN: And Your Honor, as I said, I didn't really have much of opinion, but if we're going to be litigating in order to make profit in this company, I think I would prefer to have a U.S. Trustee on this.

THE COURT: Okay. This is not a good case. This is a difficult case. This is a case where quite honestly it hadn't been converted to date because I was not convinced --that putting a Trustee in the middle of all of this was just an additional set of lawyers and an additional set of fees that would accomplish very little. And I'm not so certain whether I'm still convinced of that or not. I'm going to think about this.

So I will rule on both of these matters at a later date, but I thank you all for your appearance.

Yes, sir, if you want to say something? You have to stand, if you want to ask something of the Judge.

Yes, sir?

MR. MAPLES: Your Honor, I would like to -- pardon me, I'm hoarse. I'd just like to say that, you know, we've been fighting it for 20 months, fighting Partain. And every time we come to Court it's Partain, Partain, Partain.

Now we've got a situation, 90 percent off my back, that now we have lawyers -- you know, one particular one out of Houston, a good law firm, who tells us, "Hey, you have a big case. We're willing to take it on and we're willing to fight for you." And I think

MR. MCINNIS: And funded, most importantly.

MR. MAPLES: And what?

MR. MCINNIS: And fund the expenses of litigation.

MR. MAPLES: And they're funding the money and you know, we think that we have some real good cases, the home, the bus bank and MCI and possibly one or two more.

THE COURT: Okay. None of that goes to changes necessarily.

MS. JUE: Your Honor, if I may? I don't want to I do really want to be the skeptic here. I stood before the Court

many, many times and have heard defenses to Motions to Convert to Chapter 7 with regard to "We have this out there someplace and it's going to be the remedy that will be the cure all."

And then in actuality there is no real evidence that is presented to the Court that this is, you know, a bona fide consideration by a bona fide agreement, letter agreement, or anything Your Honor, and so I am as the U.S. Trustee representative very skeptical that this could be something fruitful for this particular bankruptcy.

MR. MCINNIS: And Your Honor, I can be sworn in as a witness. I'd be willing to testify. I've spoken to Ramon Garcia in the law offices of John O'Quinn in connection with these cases and Mr. Garcia was quite interested in taking the case, but ended up being conflicted out. The O'Quinn law firm is interested in taking the case, but they're checking their conflicts calendar right now, Your Honor.

THE COURT: Well, see, if in fact you are correct that you've got a big lawsuit against the nursing home and it's worth something and it may be further grounds to convert because this is a messy case. It's been a messy case from the beginning. So I mean, everything strikes both ways, you know. Bankruptcy is a funny business.

MR. MCINNIS: And Judge --

THE COURT: And the law of unintended consequences is always in effect in bankruptcy. No matter what you think is your strongest argument, it may be your weakest and vice versa.

MR. MCINNIS: And Your Honor, I understand that. I would simply add that, you know, we've been living under the shadow of the Indictment for the last half

THE COURT: I appreciate that, also. This is not a question of

MR. MCINNIS: and it's finally getting away from that.

THE COURT: you haven't done -- I mean, it's only the fact that you've done what you've done that you've stayed as long as you have.

MR. MCINNIS: Yes, Your Honor.

THE COURT: I mean, this is an extraordinary case. It's different from the typical

MR. MCINNIS: Right. This isn't

(Speaking at the same time)

THE COURT: bankruptcy case. This would have been converted a long time ago. I mean, if you really want this case to succeed as an 11, then now is the time for you to have a confirmable plan on file, everything ready to go to get out of here.

MR. MCINNIS: And Your Honor, being that Mr. Maples' criminal disposition didn't happen until about 20 days ago, we've been scrambling to do that and we're scrambling to get there.

THE COURT: I know that 11 is serious, complicated business and it may well be now that you are satisfied enough that he's going to be on probation that you think you can develop and propose a plan and it may well just be that all you're going to do is liquidate. And if that's the case, then get going and get the plan. I mean, the liquidating plan is the easiest of all possibilities.

So if there are forms out there, you know, I got to believe that you can find a form for a liquidating plan, plug it in, and away you go. You can file in one hour.

MR. MCINNIS: But Judge --

MS. JUE: Your Honor, let me also, you know, if we look at the reasons for conversion, under Bankruptcy Code 1112, one of the reasons would be the failure to timely file the monthly operating reports and the United States Trustee finds that the last monthly financial statement or operating report for the Maples was July 2006.

MR. MCINNIS: Your Honor, I can testify as Counsel for the Debtor that this morning his September report was for sure filed, which was due on the 20th, which was Saturday,

and then that report goes back six months. We've got all the information and --

THE COURT: Okay. I understand. I'm going to look at the entire file to make the decision in this case.

MR. MCINNIS: Thank you, Your Honor.

THE COURT: Thank you all. Good luck.

(Counsel thank the Court)

THE COURT: I think that concludes everything for today. So you all are excused and we're in recess.

(Proceeding adjourned at 10:51 a.m.)

****

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/Mary Henry
Transcriber

/s/Martin Laverne
Proof reader

12-12-06
Date

25751
JTT#

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1122 Pecan
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July 8, 2002

Mr. James H. Maples
1708 North Jackson Rd.
Pharr, Texas 78577

RE: Cause No. CL-29,530-A: Partain v. Maples

Dear Mr. Maples:

This letter is to provide you with an update on your case, and to memorialize what we previously discussed.

Because of some problems with the County Clerk's Office, Judge Gonzalez chose not to enter a judgment at the hearing last week. (Various necessary documents were not in the file for the hearing on July 3rd.) Instead, the Judge wants additional copies of the documents that we previously prepared so he can review them. He would then make a determination by July 22nd. He also wants proposed orders from each side.

We are in the process of recopying these documents, and providing them to the judge. We will also prepare a proposed judgment. While I anticipate that the judgment will be entered by July 22nd, I do not know how much the judgment will be. While the judge indicated in chambers that he thought the damages awarded were excessive, he does not have the legal authority to unilaterally reduce them. While we can argue that he should not enter any judgment because of the new pleadings, I doubt he will agree.

In the meantime, you will need to decide how to protect your assets. You told me that the only property you have is you house, your cars, the condo in McAllen, the buses, and the various bank accounts. You have also told me that everything has liens on it.

As I told you, your house and cars are exempt from satisfaction of the judgment, while the bank account, condo, and buses are not. It will take at least thirty (30) days to perfect execution for the property (the condo and the buses). However, the bank accounts could be tapped as soon as the judgment is signed, thereby putting you out of business. Accordingly, you were to start a separate corporation (called Global Limo, Inc.), and open a bank account in the name of this new corporation. The bank should not allow access to that money in that account in any garnishment proceeding to collect the judgment. While this does not prevent a lawsuit from being filed, at least it should but some time before these funds could be used to satisfy any judgment.

To further prevent execution, I suggested that you renew the lease on the condo early and that the lease be filed at the court house. While again, this does not prevent execution, it makes any such execution less likely because the property is not free and clear for sale.

You were to also discuss the matter with the bank. One idea was cross-collaterializing your house and condominium debt on the buses. This would guarantee that the bank is adequately assured of repayment of its debts. Again, this will not prevent a lawsuit or execution, but it will make the execution less likely.

We also discussed the possibility of bankruptcy, and your need to discuss the matter in more detail with a bankruptcy attorney. You said you did not wish to do that because it might cause you to lose the business.

We also discussed an appeal of this matter. I cannot tell you now whether any such appeal would succeed or fail. I have not ordered the trial transcripts because I am trying to save you money (both attorney's fees and out of pocket expenses). Generally, however, most appeals fail, and the local court of appeals are not very favorable to both businesses and business interests. It also seldom follows the law, and generally decides a case on its subjective view of the matter. This would also cost several thousand dollars.

Finally, I am attempting to settle this matter. You have provided me with some documents that I am providing to the other side in hopes of resolving this matter. We will initially take a hard position in these negotiations, in hope that we can obtain a better deal. In the meantime, I need the year 2000 income tax returns to show that to the other side. If you cannot find the return, you will need to ask your accountant for another copy.

It this is incorrect, or if you have any question, please let me know.

Sincerely,
LIVESAY LAW OFFICE
/s/Keith C.Livesay, Esquire
Keith C. Livesay, Esquire

KCL:ms
Cc: M. Mario Garcia

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 07-40385

In the Matter of: JAMES H MAPLES; VIRGINIA KATHLEEN MAPLES
Debtors

JAMES H MAPLES; VIRGINIA KATHLEEN MAPLES; TEXAS STATE BANK
Appellees

v.

JOHNNY PARTAIN
Appellant

Appeal from the United States District Court
for the Southern District of Texas

Before REAVLEY, JOLLY, and GARZA, Circuit Judges.

PER CURIAM:

The opinion issued in this case on May 30, 2008, is withdrawn and this revised opinion is substituted therefor.

Appellant Johnny Partain, proceeding pro se, raises twenty-seven issues in this appeal from the district court's affirmance of the bankruptcy court's final judgment in this adversary proceeding. After considering the briefs and reviewing the record, we find no reversible error in the district court's judgment. The judgment of the district court is therefore AFFIRMED.[1]

The dissent raises two issues and, as to these issues, enunciates general principles. We do not so much disagree with the statements of general principles as with the certainty of the dissent that they have a precise fit in this case. This case is poorly briefed, and the record is incomplete. The majority is therefore unwilling to say anything other than that the district court committed no

[1] This opinion is published on the request of the dissenting judge.

reversible error in affirming the bankruptcy court. We would observe that, in our opinion, it is not pellucid that Mr. Partain's charge of conspiracy between Texas State Bank ("TSB") and the debtor and/or the debtor's estate to deprive him of his counsel does not allege and relate to liability on the part of the debtor's estate in connection with this adversary proceeding. Thus, based on what is before us, we will not say flatly that the bankruptcy court had no jurisdiction to address this claim. The claim, in any event, is patently meritless. Second, it is uncertain whether, at some point, the bankruptcy court may have acquired jurisdiction over the assets of the corporation given that the stock of the corporation is now solely controlled by the bankruptcy trustee, who apparently had control over the assets at all the relevant times herein. The record and law are clear, however, that Mr. Partain never had any interest in these assets at any time relevant to these proceedings. We are therefore satisfied simply to AFFIRM.

AFFIRMED.

EMILIO M. GARZA, Circuit Judge, concurring in part and dissenting in part:

I find it ironic that the majority states that my dissenting opinion merely "enunciates general principles," while resting its own decision (which includes no citation to legal authority) on the fact that the majority is simply "uncertain" as to the "precise fit" of these principles to the case at hand. These "general principles," which the majority fails to enunciate, are nothing other than the foundational principles of bankruptcy jurisdiction. While I admit that the briefing is poor, this difficulty does not authorize the majority's abdication of any meaningful review of the jurisdictional issues raised below. Therefore, I concur in the majority's affirmance except as to the following.

First, the bankruptcy court did not have subject matter jurisdiction over Partain's counterclaim against Texas State Bank ("TSB") in which Partain alleged that TSB intentionally created a conflict of interest with Partain's attorney in a prior case. The law is certainly pellucid))even if the majority believes a claim to be "patently meritless"))that the bankruptcy court must have subject-matter jurisdiction before reaching the merits of a claim. See Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 94-95 (1998). "[B]ankruptcy courts are not courts of general jurisdiction and do not have jurisdiction over an action between non-debtors . . . unless that action is 'related to' the bankruptcy." In re Prescription Home Health Care, Inc., 316 F.3d 542, 547 (5th Cir. 2002); see 28 U.S.C. § 1334(b). "[A]n action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and . . . in any way impacts upon the handling and administration of the bankrupt estate." In re Walker, 51 F.3d 562, 569 (5th Cir. 1995) (internal quotation marks omitted). Any liability that might arise from this claim would be borne individually by TSB. Nothing in the record suggests that TSB's potential exposure would impact the Mapleses' bankruptcy estate. Because this claim between third parties has no conceivable effect on the bankruptcy estate, the bankruptcy court improperly resolved this claim over which it lacked subject matter jurisdiction. See In re Zale Corp., 62 F.3d 746, 753 (5th Cir. 1995).

Secondly, the bankruptcy court exceeded its statutory grant of jurisdiction over property when it placed Global Limo's corporate assets into the individual bankruptcy estate of the Mapleses. The bankruptcy court's jurisdiction over property is limited to "property, wherever located, of the debtor as of the commencement of such case, and [] property of the estate." 28 U.S.C. § 1334(e)(1). The Mapleses' property interests, unless otherwise dictated by the bankruptcy code, are determined by reference to state law. *See Butner v. United States*, 440 U.S. 48, 54-55 (1979).

Even though the Mapleses were sole shareholders of Global Limo, they never owned Global Limo's corporate assets. *See Trott v. Flato*, 244 S.W. 1085, 1088 (Tex. Civ. App. 1922) (collecting cases). Despite forfeiture of its charter, the corporation still existed at the time the Mapleses filed for bankruptcy. *See Humble Oil & Ref. Co. v. Blankenburg*, 235 S.W.2d 891, 893-94 (Tex. 1951). The forfeiture of Global Limo's corporate charter did not provide the Mapleses with any new ownership interest in Global Limo's property. As such, the Mapleses were never more than shareholders of Global Limo; and they did not have a property interest in Global Limo's corporate assets at the time they filed for bankruptcy.[1] Nor could the bankruptcy court have placed corporate assets into the Mapleses' estate through an avoided preference under 11 U.S.C. § 547(b). Any transfer of Global Limo's assets was not a transfer of a property interest held by the Mapleses. *See In re Kelton Motors, Inc.*, 97 F.3d 22, 25 (2d Cir. 1996) (Under § 547(b), a trustee "may only seek those legal or equitable interests that the debtor would have held at the time of the petition but for the debtor's transfer of those interests."). Accordingly, Global Limo's corporate assets were neither property of the Mapleses at the time of filing nor property of the estate. To the extent that it placed Global Limo's corporate assets into the Mapleses' bankruptcy estate, the bankruptcy court exceeded the limits of its jurisdiction under § 1334(e)(1).

For the foregoing reasons, I would vacate the district court's judgment to the extent the bankruptcy court lacked jurisdiction under § 1334(b) and § 1334(e)(1). As such, I

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[1] The only argument raised by the Mapleses to address this issue on appeal 1 is that they became "beneficial owners" of Global Limo's corporate assets when the charter was forfeited. As noted above, the forfeiture of Global Limo's charter did not change the Mapleses' ownership interest in Global Limo's assets. Courts and leading treatises have recognized that a debtor's equitable or beneficial interest as a shareholder is insufficient to allow corporate assets to be placed in the debtor's bankruptcy estate. *See Fowler v. Shadel*, 400 F.3d 1016, 1018-19 (7th Cir. 2005) (collecting sources).

respectfully dissent from the majority's decision to affirm the district court judgment in its entirety.

APPEAL, CLOSED

U.S. Bankruptcy Court

Southern District of Texas (McAllen)
Adversary Proceeding #: 05-07009

Assigned to: Marvin Isgur
Related BK Case: 05-70128
Related BK Title: James Howard Maples and Virginia Kathleen Maples
Related BK Chapter: 11
Demand:
Nature[s] of Suit: 434 Injunctive Relief

Date Filed: 03/28/05
Date Terminated: 05/01/06

Plaintiff

James Howard Maples
605 Wisteria Avenue
McAllen, TX 78504
SSN: xxx-xx-9431

represented by
James Howard Maples
PRO SE

Kelly K McKinnis
Attorney at Law
612 Nolana Loop Ste 240
McAllen, TX 78504
956-686-7039
Fax : 956-686-8261
Email:
mckinnis22@yahoo.com
TERMINATED: 02/16/2007
LEAD ATTORNEY

Virginia Kathleen Maples
605 Wisteria Avenue
McAllen, TX 78504
SSN: xxx-xx-1825

represented by
James Howard Maples
PRO SE

Kelly K McKinnis
Attorney at Law
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McAllen, TX 78504
956-686-7039
Fax : 956-686-8261

Email:
mckinnis22@yahoo.com
TERMINATED: 02/16/2007
LEAD ATTORNEY

V.
Defendant

Johnny Partain
7020 N. 16th
McAllen, TX 78504
Teresa Partain
7020 N. 16th
McAllen, TX 78504
Counter-Claimant

Johnny Partain
7020 N. 16th
McAllen, TX 78504
V.
Counter-Defendant

James Howard Maples
605 Wisteria Avenue
McAllen, TX 78504
SSN: xxx-xx-9431

represented by
James Howard Maples
PRO SE

Kelly K McKinnis
(see above for address)
TERMINATED: 02/16/2007

Virginia Kathleen Maples
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McAllen, TX 78504
SSN: xxx-xx-1825

represented by
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PRO SE

Kelly K McKinnis
(see above for address)
TERMINATED: 02/16/2007

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SSN: xxx-xx-1825

represented by
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Kelly K McKinnis
(see above for address)
TERMINATED: 02/16/2007

3rd Party Plaintiff

Johnny Partain
7020 N. 16th
McAllen, TX 78504
V.
3rd Pty Defendant

Texas State Bank
P.O. Box 4797
McAllen, Tx 78502

represented by Vicki M Skaggs
Atlas & Hall
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Counter-Claimant

Johnny Partain
7020 N. 16th
McAllen, TX 78504
V.
Counter-Defendant

James Howard Maples
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represented by
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PRO SE

Kelly K McKinnis
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TERMINATED: 02/16/2007

Virginia Kathleen Maples
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McAllen, TX 78504
SSN: xxx-xx-1825

represented by
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Kelly K McKinnis
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TERMINATED: 02/16/2007

Texas State Bank
P.O. Box 4797
McAllen, Tx 78502

represented by
Vicki M Skaggs
(See above for address)

Counter-Claimant

Johnny Partain
7020 N. 16th
McAllen, TX 78504
V.
Counter-Defendant

James Howard Maples
605 Wisteria Avenue
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SSN: xxx-xx-9431

represented by
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Kelly K McKinnis
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TERMINATED: 02/16/2007

Virginia Kathleen Maples
605 Wisteria Avenue
McAllen, TX 78504
SSN: xxx-xx-1825

Texas State Bank
P.O. Box 4797
McAllen, Tx 78502

File Date	#	Docket Text
3/28/2005	1	434 (Injunctive Relief): Complaint For Injunctive Relief And Request For Temporary Restraining Order by James Howard Maples, Virginia Kathleen Maples against Johnny Partain, Teresa Partain. Receipt Number CC, Fee Amount $150 (Attachments: # 1 Exhibit 1- Affidavit of James H. Maples# 2 Proposed Order Granting Temporary Restraining Order) (McKinnis, Kelly) (Entered: 03/28/2005)
3/29/2005		Pursuant to instructions, this adversary proceeding is to be transferred (to Judge Marvin Isgur from Judge Richard S. Schmidt) as established by General Order 2004-3. (aain) Modified on 3/29/2005 (mrios,). (Entered: 03/29/2005)

3/29/2005		Certificate of Telephone Notice. Contacted Kelly McKinnis re TRO hearing. Movant to notice all interested parties and file a certificate of service with the court. Hearing scheduled for 3/30/2005 at 04:00 PM at Houston, Courtroom 10B (MI). (aain) (Entered: 03/29/2005)
3/29/2005		The TRO hearing was incorrectly set for 4:00 p.m. on March 30th. The correct hearing date is 4:00 p.m. on March 29th. This hearing is by televideo conference between the Houston and McAllen courtrooms. (aain) (Entered: 03/29/2005)
3/29/2005	2	Certificate of Service Filed by James Howard Maples, Virginia Kathleen Maples (related document(s): Entry) (McKinnis, Kelly) (Entered: 03/29/2005)

3/29/2005		Courtroom Minutes. Time Hearing Held: 4:00. Appearances: Kelly McKinnis for the plaintiff, Johnny Partain for himself, the defendant, Vicki Skaggs for Texas State Bank. Re:1. The parties argue their positions with respect to the requested relief. The Court GRANTS issuance of the TRO. Findings announced for the record. The Court makes specific orders with respect to this matter. TRO setting forth those requirements to be prepared & entered by the Court. Further hearing conference regarding this matter set for 4/8/05 at 03:30 PM at Houston Courtroom 10B (MI). Hearing will be by televideo conference with McAllen. The Court also to hold a status conference on 4/18/05 at 04:30 PM in McAllen. (cson,) (Entered: 03/29/2005)
3/29/2005	3	Temporary Restraining Order Signed on 3/29/2005 at 9:17pm (Related document(s):1 Complaint,) Preliminary Injunction scheduled for 4/8/2005 at 03:30 PM at Houston, Courtroom 10B (MI). Status Conference to be held on 4/19/2005 at 04:30 PM at Houston, Courtroom 10B (MI). (mkal,) (Entered: 03/30/2005)

4/1/2005	4	Motion For Contempt. Objections/Request for Hearing Due in 20 days. Filed by James Howard Maples, Virginia Kathleen Maples (Attachments: # 1 Exhibit 1-Temporary Restraining Order# 2 Proposed Order For Johnny Partain to Show Cause# 3 Proposed Order For Teresa Partain to Show Cause# 4 Proposed Order Granting Motion For Contempt) (McKinnis, Kelly) (Entered: 04/01/2005)
4/1/2005	5	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through March 29, 2005. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 04/01/2005)
4/1/2005	6	BNC Certificate of Mailing. (Related document(s):3 Order Setting Hearing,) No. of Notices: 5. Service Date 04/01/2005. (Admin.) (Entered: 04/02/2005)
4/4/2005		Certificate of Telephone Notice. Contacted Kelly McKinnis rehearing on Motion for Contempt (Doc. #4). Movant to notice all interested parties and file a certificate of service with the court. Televideo Hearing between Houston and McAllen scheduled for 4/8/2005 at 03:30 PM at Houston, Courtroom 10B (MI). (aain) (Entered: 04/05/2005)
4/5/2005	7	Certificate of Service Filed by James Howard Maples, VirginiaKathleen Maples (related document(s):4 Motion For Contempt. Objections/Request for Hearing Due in 20 days.) (McKinnis, Kelly) (Entered: 04/05/2005)

4/5/2005	8	Notice of Hearing on Plaintiffs' Motion For Contempt. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 04/05/2005)
4/8/2005	9	Second Motion For Contempt. Objections/Request for Hearing Due in 20 days. Filed by James Howard Maples, Virginia Kathleen Maples (Attachments: # 1 Exhibit 1-Temporary Restraining Order# 2 Proposed Order to Show Cause For Johnny Partain# 3 Proposed Order to Show Cause For Teresa Partain# 4 Proposed Order Granting Plaintiffs' Second Motion For Contempt) (McKinnis, Kelly) (Entered: 04/08/2005)
4/8/2005		Courtroom Minutes. Time Hearing Held: 03:30 p.m. Appearances: Kelly McKinnis for plaintiffs; Vicky Skaggs and Michael Tuttle for Texas State Bank; Johnny Partian-Pro-Se Defendant. Mr. Partain stated he needed more time to obtain counsel. By agreement of the parties, the Court will issue a Preliminary Injunction which will be taken up at 2:00 p.m. on April 19th. The status hearing is rescheduled to this time. All pending motions with due process notice will be considered as well. (Related document(s):4 Motion For Contempt.) (aain) (Entered: 04/08/2005)
4/8/2005	10	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through April 5, 2005. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 04/08/2005)

4/8/2005	12	Answer to Complaint (Related document(s):1 Complaint,), Counterclaim by Johnny Partain against James Howard Maples, Virginia Kathleen Maples Filed by Johnny Partain (gcha,) (Entered: 04/12/2005)
4/11/2005	11	Order Setting Preliminary Injunction and Continuing Hearing on Motion for Contempt Signed on 4/11/2005 (Related document(s):4 Motion For Contempt.) Hearing scheduled for 4/19/2005 at 02:00 PM at Houston, Courtroom 10B (MI). (sgue,) (Entered: 04/11/2005)
4/11/2005		Fee waived (Related document(s):1 Complaint,) (agou,) (Entered: 04/11/2005)
4/13/2005	13	BNC Certificate of Mailing. (Related document(s):11 Order Setting Hearing) No. of Notices: 5. Service Date 04/13/2005. (Admin.) (Entered: 04/14/2005)
4/15/2005	14	Motion to Vacate. Objections/Request for Hearing Due in 20 days (related document(s):3 Order Setting Hearing,). Filed by Defendant Johnny Partain (Attachments: # 1 Proposed Order # 2 Order Setting Hearing) (gcha,) (Entered: 04/15/2005)
4/15/2005	15	Motion to Expedite Hearing (related document(s):14 Motion to Vacate. Objections/Request for Hearing Due in 20 days (related document(s):3 Order Setting Hearing,).). Filed by Defendant Johnny Partain (gcha,) (Entered: 04/15/2005)

4/15/2005	16	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through April 12, 2005. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 04/15/2005)
4/15/2005	18	Order Granting (Related Doc# 15) and Setting Hearing Signed on 4/15/2005 (Related document(s):14 Motion to Vacate. Objections/Request for Hearing Due in 20 days (related document (s):3 Order Setting Hearing,).) Hearing scheduled for 4/19/2005 at 02:00 PM at Brownsville, 600 E Harrison. (chor,) (Entered: 04/19/2005)
4/15/2005	23	Order Granting Motion to Expedite Hearing on Motion #14 Signed on 4/15/2005. (Related document(s):14 Motion to Vacate). Hearing on #14 scheduled for 4/19/2005 at 02:00 PM at McAllen, Bentsen Twr W Bush Hwy 83. (mkadlub,) (Entered: 04/26/2005)
4/18/2005	17	Notice of Location of All Hearings Scheduled For April 19, 2005. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 04/18/2005)
4/19/2005	19	Response (related document(s):14 Motion to Vacate. Objections/Request for Hearing Due in 20 days (related document (s):3 Order Setting Hearing,).). Filed by James Howard Maples, Virginia Kathleen Maples (Attachments: # 1 Proposed Order Denying Defendant Johnny Partain's Motion to Vacate Restraining Order) (McKinnis, Kelly) (Entered: 04/19/2005)

4/19/2005	20	Courtroom Minutes. Time Hearing Held: 2:00. Appearances: Kelly McKinnis for the plaintiff, Hector Gonzalez for the defendant, Vicki Skaggs for Texas State Bank. Re:1,4,9,14. Jim Maples, Juan Anzaleua, & Johnny Partain sworn. Direct & cross examination administered by counscl. Maples exhibit 1 admitted into evidence. Partain's exhibit 1 also admitted into evidence. Kelly McKinnis sworn. Mr. McKinnis provides testimony with respect to attorney fees. The Court defers ruling on the matters today. The Court to order a transcript from the 4/8/05 hearing. Parties may raise objections to Mr. Partain's testimony given at the 4/8/05 hearing during a hearing to be held on 5/9/2005 at 09:45 AM at Houston, Courtroom 10B (MI). Parties may participate in the hearing via telephone. (cson,) Modified on 4/20/2005 (cson,). (Entered: 04/19/2005)
4/21/2005	21	BNC Certificate of Mailing. (Related document(s):18 Order Setting Hearing,) No. of Notices: 5. Service Date 04/21/2005. (Admin.) (Entered: 04/22/2005)
4/22/2005	22	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through April 19, 2005. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 04/22/2005)

4/27/2005	24	Transcript RE: Injunction/Motion for Contempt hearing held on 4/8/2005, before the Honorable Marvin Isgur. Transcript is available for viewing in the office of the clerk fileroom. (Related document(s): Courtroom Minutes (Text), (dcla,) (Entered: 04/27/2005)
4/28/2005	25	BNC Certificate of Mailing. (Related document(s):23 Order Setting Hearing) No. of Notices: 5. Service Date 04/28/2005. (Admin.) (Entered: 04/29/2005)
4/29/2005	26	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through April 26, 2005. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 04/29/2005)
5/5/2005	27	Notice and Request for Business Records. Filed by Johnny Partain (gcha,) (Entered: 05/05/2005)
5/6/2005	28	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through May 6, 2005. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 05/06/2005)
5/9/2005	29	Notice of Note Payments By Global Limo, Inc. to Texas State Bank. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 05/09/2005)

5/9/2005	30	Courtroom Minutes. Time Hearing Held: 9:45. Appearances: Kelly McKinnis for the plaintiff, Hector Gonzalez for the defendant, Vicki Skaggs & Michael Tuttle for Texas State Bank. Re:1,4,9, 14]. The Court continues the above listed matters to 5/16/2005 at 03:30 PM at McAllen, Bentsen Twr W Bush Hwy 83. The Court to hear evidence on the motion to vacate the TRO. The Court will also hear argument on the transcript & motions for contempt. (cson,) (Entered: 05/09/2005)
5/9/2005		Hearing Set On (Related document(s):4,9,14). Hearing with respect to the matters listed above scheduled for 5/16/2005 at 03:30 PM at McAllen, Bentsen Twr W Bush Hwy 83. (cson,) (Entered:05/09/2005)
5/13/2005	35	Notice And Second Request For Full Access to Business Records. Filed by Johnny Partain (gcha,) (Entered: 05/17/2005)
5/13/2005	36	Motion For Contempt. Objections/Request for Hearing Due in 20 days. Filed by Johnny Partain (gcha,) (Entered: 05/17/2005)
5/14/2005	31	Motion to Extend Time to File Weekly Report For Global Limo, Inc. Due May 13, 2005 Filed by James Howard Maples, Virginia Kathleen Maples (Attachments: # 1 Proposed Order Granting Plaintiffs' Motion For Extension of Time to File Weekly Report For Global Limo, Inc. Due May 13, 2005) (McKinnis, Kelly) (Entered: 05/14/2005)

5/14/2005	32	Amended Certificate of Service Filed by James Howard Maples, Virginia Kathleen Maples (related document(s):31 Motion to Extend Time to File Weekly Report For Global Limo, Inc. Due May 13, 2005) (McKinnis, Kelly) (Entered: 05/14/2005)
5/16/2005	33	Transcript RE: Partial Transcript - Testimony of Kelly McKinnis Only hearing held on April 19, 2005 before the Honorable Marvin Isgur. Transcript is available for viewing in the office of the clerk fileroom. (pwill,) (Entered: 05/16/2005)
5/16/2005		Courtroom Minutes. Time Hearing Held: 3:30. Appearances: Kelly McKinnis for the plaintiff, Victor Gonzalez for the defendant, Vicki Skaggs & Michael Tuttle for Texas State Bank. Re:4,9. Counsel present argument with respect to the motion. Motion DENIED. The Court finds that there is insufficient evidence before the Court to hold the defendant in civil contempt. Ruling is without prejudice to the ultimate damages finding. (cson,) (Entered: 05/16/2005)

5/16/2005		Courtroom Minutes. Time Hearing Held: 3:30. Appearances: Kelly McKinnis for the plaintiff, Victor Gonzalez for the defendant, Vicki Skaggs & Michael Tuttle for Texas State Bank. Re:14. All evidence from prior hearings carried forward. Defendant's exhibits 1 & 2 admitted into evidence. James Maples & Johnny Partain sworn. Direct & cross examination administered by counsel. Counsel present closing arguments. Motion to vacate DENIED. Preliminary injunction extended through the date of trial. Findings announced for the record. Order to this effect to be prepared & entered by counsel. (cson,) (Entered: 05/16/2005)
5/16/2005	34	Courtroom Minutes. Time Hearing Held: 3:30. Appearances: Kelly McKinnis for the plaintiff, Victor Gonzalez for the defendant, Vicki Skaggs & Michael Tuttle for Texas State Bank. Re:1. Discovery deadline set for 8/16/05. Dispositive motions due by 8/19/05. Expert reports to be filed by 7/25/05. Rebuttal reports due by 8/10/05. Trial date set for 10/17/2005 at 09:00 AM at McAllen, Bentsen Twr W Bush Hwy 83. (cson,) (Entered: 05/16/2005)
5/17/2005	37	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through May 13, 2005. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 05/17/2005)

5/17/2005	39	Order Denying Motion To Vacate (Related Doc # 14) Signed on 5/17/2005. (gcha,) (Entered: 05/20/2005)
5/17/2005	40	Order Denying Motion For Contempt (Related Doc # 4), Denying Second Motion For Contempt (Related Doc # 9) Signed on 5/17/2005. (gcha,) (Entered: 05/20/2005)
5/18/2005	38	Order Granting Motion to Extend Time (Related Doc # 31) Signed on 5/18/2005. (ypip,) (Entered: 05/18/2005)
5/19/2005	42	Order Granting Preliminary Injunction. Preliminary Injunction expires 10/17/05. Signed on 5/19/2005 (gcha,) (Entered: 05/20/2005)
5/20/2005	41	Scheduling Order Signed on 5/20/2005 Discovery due by 8/16/2005. Trial date set for 10/17/2005 at 09:00 AM at McAllen, Bentsen Twr W Bush Hwy 83. (gcha,) (Entered: 05/20/2005)
5/20/2005	43	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through May 20, 2005. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 05/20/2005)
5/20/2005	44	BNC Certificate of Mailing. (Related document(s):38 Order on Motion to Extend Time) No. of Notices: 5. Service Date 05/20/2005. (Admin.) (Entered: 05/21/2005)
5/22/2005	45	BNC Certificate of Mailing. (Related document(s):39 Order on Motion to Vacate) No. of Notices: 5. Service Date 05/22/2005. (Admin.) (Entered: 05/23/2005)

5/22/2005	46	BNC Certificate of Mailing. (Related document(s):41 Scheduling Order) No. of Notices: 5. Service Date 05/22/2005. (Admin.) (Entered: 05/23/2005)
5/22/2005	47	BNC Certificate of Mailing. (Related document(s):42 Generic Order) No. of Notices: 5. Service Date 05/22/2005. (Admin.) (Entered: 05/23/2005)
5/22/2005	48	BNC Certificate of Mailing. (Related document(s):40 Order on Motion for Contempt,) No. of Notices: 5. Service Date 05/22/2005. (Admin.) (Entered: 05/23/2005)
5/24/2005	49	Notice of Appeal. (related document(s):42 Generic Order). Receipt Number 0,Fee Amount $255. Filed by Johnny Partain Appellant Designation due by 6/3/2005. (Appeal No. 05-06) (gcha,) Modified on 5/24/2005 (gcha,). (Entered: 05/24/2005)
5/24/2005	50	Notice of Appeal. (related document(s):39 Order on Motion to Vacate). Receipt Number 0,Fee Amount $255. Filed by Johnny Partain Appellant Designation due by 6/3/2005. (gcha,) Modified on 5/24/2005 (Appeal No. 05-07) (gcha,). (Entered: 05/24/2005)
5/24/2005	51	Certificate of Service Filed by Johnny Partain (related document (s):49 Notice of Appeal, 50 Notice of Appeal) (gcha,) (Entered: 05/24/2005)
5/24/2005	52	Notice of Retention of BK record pursuant to Local Bankruptcy Rule 8007 (Appeal No. 05-07) (gcha,) (Entered: 05/25/2005)

5/24/2005	53	Notice of Retention of BK record pursuant to Local Bankruptcy Rule 8007 (Appeal No. 05-06) (gcha,) (Entered: 05/25/2005)
5/25/2005	54	Motion 2008 For Initiation of Criminal Perjury Proceedings Filed by Johnny Partain (Attachments: # 1 Proposed Order) (gcha,) (Entered: 05/25/2005)
5/25/2005	55	Motion To Deny Funds To Texas State Bank Filed by Johnny Partain (Attachments: # 1 Proposed Order # 2 Proposed Order) (gcha,) (Entered: 05/25/2005)
5/27/2005	56	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through May 27, 2005. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 05/27/2005)
5/27/2005	58	Appellant Designation of Contents For Inclusion in Record On Appeal (related document(s):49 Notice of Appeal). Filed by Johnny Partain (gcha,) (Entered: 06/02/2005)
6/1/2005	57	Response (related document(s):36 Motion For Contempt. Objections/Request for Hearing Due in 20 days.). Filed by James Howard Maples, Virginia Kathleen Maples (Attachments: # 1 Proposed Order Denying Defendant Johnny Partain's Motion For Contempt) (McKinnis, Kelly) (Entered: 06/01/
6/2/2005		Receipt Number 968922, Fee Amount $255.00. (Related document(s):49 Notice of Appeal) (dter,) (Entered: 06/03/2005)

6/3/2005	59	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through June 3, 2005. Filed by James Howard Maples,Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 06/03/2005)
6/10/2005	60	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through June 10, 2005. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 06/10/2005)
6/13/2005	61	Response (related document(s):55 Motion To Deny Funds To Texas State Bank). Filed by James Howard Maples, Virginia Kathleen Maples (Attachments: # 1 Proposed Order Denying Defendant Johnny Partain's Motion to Deny Funds to Texas State Bank) (McKinnis, Kelly) (Entered: 06/13/2005)
6/13/2005	62	Response (related document(s):54 Motion 2008 For Initiation of Criminal Perjury Proceedings). Filed by James Howard Maples, Virginia Kathleen Maples (Attachments: # 1 Proposed Order Denying Defendant Johnny Partain's 2008 Motion to Initiate Criminal Perjury Proceedings) (McKinnis, Kelly) (Entered: 06/13/2005)
6/17/2005	63	Notice of Weekly Report For Global Limo, Inc. For The Period Through June 17, 2005. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 06/17/2005)

6/20/2005	64	Amended Counterclaim by Johnny Partain against James Howard Maples, Virginia Kathleen Maples (jezz,) (Entered: 06/20/2005)
6/20/2005	65	Third-Party Complaint by Johnny Partain against Texas State Bank. (jezz,) (Entered: 06/21/2005)
6/24/2005	66	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through June 24, 2005. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 06/24/2005)
7/2/2005	67	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through July 1, 2005. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 07/02/2005)
7/2/2005	68	Motion to Extend Time to File Weekly Report For Global Limo, Inc. Due July 1, 2005. Filed by James Howard Maples, Virginia Kathleen Maples (Attachments: # 1 Proposed Order Granting Plaintiffs' Motion For Extension of Time to File Weekly Report For Global Limo, Inc. Due July 1, 2005) (McKinnis, Kelly) (Entered: 07/02/2005)
7/8/2005	69	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through July 8, 2005. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 07/08/2005)

7/11/2005	70	Transcript RE: Status Conference/Motion for Contempt/Injunction Hearing hearing held on 04/19/2005 before the Honorable Marvin Isgur. Transcript is available for viewing in the office of the clerk fileroom. (blas,) (Entered: 07/11/2005)
7/11/2005	71	Transcript RE: Scheduling Conference hearing held on 05/09/2005 before the Honorable Marvin Isgur. Transcript is available for viewing in the office of the clerk fileroom. (blas,) (Entered: 07/11/2005)
7/11/2005	72	Transcript RE: Status Conference hearing held on 05/16/2005 before the Honorable Marvin Isgur. Transcript is available for viewing in the office of the clerk fileroom. (blas,) (Entered: 07/11/2005)
7/11/2005	73	Answer to Partain's Third Party Complaint Filed by Texas State Bank (Attachments: # 1 Proposed Order Order on Motion to Dismiss# 2 Proposed Order Order on More Definite Statement)(Skaggs, Vicki) (Entered: 07/11/2005)
7/11/2005	74	Motion to Strike Partain's Jury Demand Filed by Texas State Bank Hearing scheduled for 8/29/2005 at 01:30 PM at McAllen, Bentsen Twr W Bush Hwy 83. (Attachments: # 1 Proposed Order Order on Motion to Strike) (Skaggs, Vicki) (Entered: 07/11/2005)

7/15/2005	75	Brief Filed by Texas State Bank (related document(s):74 Motion to Strike Partain's Jury Demand) (Skaggs, Vicki) (Entered: 07/15/2005)
7/15/2005	76	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through July 15, 2005. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 07/15/2005)
7/18/2005	77	Motion to Withdraw Document (related document(s):50 Notice of Appeal). Filed by Defendant Johnny Partain (gcha,) (Entered: 07/18/2005)
7/20/2005	78	Notice of Docketing Record on Appeal. Civil Action Number:. Parties notified. (Related document(s):49 Notice of Appeal) (Mailed to McAllen District Office via fed-ex.) (gcha,) (Entered: 07/20/2005)
7/22/2005	79	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through July 22, 2005. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 07/22/2005)
7/25/2005	80	Notice of Designation of Expert and Filing of Expert Report. (Related document(s):41 Scheduling Order) Filed by Texas State Bank (Attachments: # 1 Exhibit Expert Report of Tony Gorman)(Skaggs, Vicki) (Entered: 07/25/2005)
7/28/2005	81	Receipt of Civil Case No. M-05-257 from District Clerk's Office (Related document #49) (gcha,) (Entered: 07/28/2005)

7/29/2005	82	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through July 29, 2005. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 07/29/2005)
8/1/2005	84	Objection (related document(s):74 Motion to Strike Partain's Jury Demand)and Brief In Support of Motion to Strike Jury Demand Filed by Johnny Partain (Attachments: # 1 Exhibits) (gcha,) Modified on 8/2/2005 (gcha,). (Entered: 08/02/2005)
8/1/2005	85	Objection by Johnny Partain (Related document(s):73 Texas State Bank's Motion to Dismiss and Motion for More Definite Statement) (gcha,) (Entered: 08/02/2005)
8/2/2005	83	Proposed Order Submission After Hearing Filed by Johnny Partain (related document(s):77 Notice of Appeal) (gcha,) Modified on 10/4/2005 (gcha,). (Entered: 08/02/2005)
8/3/2005	86	Order Granting Motion to Extend Time to File Weekly Report for Global Limo, Inc due July 1, 2005 (Related Doc # 68) Signed on 8/3/2005. (jezz,) (Entered: 08/03/2005)
8/5/2005	87	Order Resetting Trial Signed on 8/5/2005 (Related document(s):1 Complaint,) Trial rescheduled for 8/15/2005 at 09:00 AM at McAllen, Bentsen Twr W Bush Hwy 83. (jezz,) (Entered: 08/05/2005)

8/5/2005	88	Order Vacating Order Signed on 8/5/2005 (Related document(s):1 Complaint,) Trial set for 10/17/2005 at 09:00 AM at McAllen, Bentsen Twr W Bush Hwy 83. (gjon,) (Entered: 08/05/2005)
8/5/2005	89	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through August 5, 2005. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 08/05/2005)
8/5/2005	90	BNC Certificate of Mailing. (Related document(s):86 Order on Motion to Extend Time) No. of Notices: 7. Service Date 08/05/2005. (Admin.) (Entered: 08/06/2005)
8/7/2005	91	BNC Certificate of Mailing. (Related document(s):87 Order Setting Hearing) No. of Notices: 7. Service Date 08/07/2005. (Admin.) (Entered: 08/08/2005)
8/7/2005	92	BNC Certificate of Mailing. (Related document(s):88 Order Setting Hearing) No. of Notices: 7. Service Date 08/07/2005. (Admin.)(Entered: 08/08/2005)
8/12/2005	93	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through August 12, 2005. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 08/12/2005)
8/15/2005	94	Motion for Protective Order Filed by Texas State Bank (Attachments: # 1 Exhibit Exhibit "A"# 2 Proposed Order) (Skaggs, Vicki) (Entered: 08/15/2005)

8/17/2005	95	Motion to Amend (related document(s):1 Complaint,). Filed by James Howard Maples, Virginia Kathleen Maples (Attachments: # 1 Exhibit A- Plaintiffs' First Amended Original Complaint# 2 Exhibit 1- Affidavit of James H. Maples# 3 Proposed Order Granting Plaintiffs' Motion For Leave to File Amended Complaint) (McKinnis, Kelly) (Entered: 08/17/2005)
8/18/2005	96	Rule 26 Initial Disclosures Filed by Johnny Partain (gcha,) (Entered: 08/18/2005)
8/19/2005	97	Motion For Summary Judgment. Objections/Request for Hearing Due in 20 days. Filed by Texas State Bank (Attachments: # 1 Exhibit A# 2 Exhibit B# 3 Proposed Order) (Skaggs, Vicki) (Entered: 08/19/2005)
8/19/2005	98	Amended Motion For Summary Judgment. Objections/Request for Hearing Due in 20 days. Filed by Texas State Bank (Attachments: # 1 Exhibit A# 2 Exhibit B# 3 Proposed Order) (Skaggs, Vicki) (Entered: 08/19/2005)
8/19/2005	99	Motion for Sanctions. Objections/Request for Hearing Due in 20 days. Filed by Texas State Bank (Attachments: # 1 Proposed Order) (Skaggs, Vicki) (Entered: 08/19/2005)

8/19/2005	100	Answer to Counterclaim Filed by James Howard Maples, Virginia Kathleen Maples (Attachments: # 1 Proposed Order Granting Motion to Dismiss For Failure to State A Cause of Action# 2 Proposed Order Granting Motion For More Definite Statement)(McKinnis, Kelly) (Entered: 08/19/2005)
8/19/2005	101	Motion For Summary Judgment. Objections/Request for Hearing Due in 20 days. Filed by James Howard Maples, Virginia Kathleen Maples (Attachments: # 1 Exhibit 1-Turnover Order of January 27, 2005# 2 Exhibit 2-Order Finding Compliance By Texas State Bank# 3 Proposed Order Granting Motion For Summary Judgment) (McKinnis, Kelly) (Entered: 08/19/2005)
8/20/2005	102	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through August 22, 2005. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 08/20/2005)
8/23/2005	103	Order Resetting Trial Signed on 8/23/2005 (Related document(s):1 Complaint,) Hearing scheduled for 10/17/2005 at 09:00 AM at Brownsville, 600 E Harrison. (gcha,) (Entered: 08/23/2005)
8/25/2005	104	BNC Certificate of Mailing. (Related document(s):103 Order Setting Hearing) No. of Notices: 7. Service Date 08/25/2005. (Admin.) (Entered: 08/26/2005)

8/26/2005	105	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through August 26, 2005. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 08/26/2005)
8/29/2005		Courtroom Minutes. Time Hearing Held: 1:30. Appearances: Vicki Skaggs & Michael Tuttle for Texas State Bank, Johnny Partain for himself, the defendant. Re:74. The Court continues the hearing on this matter to 9/20/05 at 9:00 AM in McAllen. The Court will also take up motions #95, #97, #98, & #99. The Court to also take up its own motion to set trial. Counsel to file a joint notice that sets forth all matters to be heard on 9/20/05. (cson,) (Entered: 08/29/2005)
8/29/2005		Hearing Set On 95, 97, 98, 99. Hearing scheduled for 9/20/2005 at 09:00 AM at McAllen, Bentsen Twr W Bush Hwy 83. (cson,) (Entered: 08/29/2005)
9/2/2005	106	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through September 2, 2005. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 09/02/2005)
9/5/2005	107	Proposed Order Submission After Hearing Filed by Texas State Bank (Attachments: # 1 Proposed Order) (Skaggs, Vicki) (Entered: 09/05/2005)

9/7/2005	108	DOCKETED IN ERROR. FILED AS A RESPONSE, NOT A MOTION. FOR CORRECTED ENTRY, SEE #109. Motion for Protective Order and Response to Texas State Bank's Objections Filed by Johnny Partain (Attachments: # 1 Proposed Order) (gcha,) Modified on 9/7/2005 (gcha,). Modified on 9/12/2005 (than,). (Entered: 09/07/2005)
9/7/2005	109	Response (related document(s):94 Motion for Protective Order). Filed by Johnny Partain (than,) (Entered: 09/08/2005)
9/9/2005	110	Response (related document(s):95 Motion to Amend (related document(s):1 Complaint,).). Filed by Johnny Partain (Attachments:# 1 Proposed Order) (gcha,) (Entered: 09/09/2005)
9/9/2005	111	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through September 9, 2005. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 09/09/2005)

9/9/2005	112	Order Setting Hearing Signed on 9/9/2005 (Related document(s):99 Motion for Sanctions. Objections/Request for Hearing Due in 20 days., 29 Notice, 73 Answer to Third Party Complaint, 101 Motion For Summary Judgment. Objections/Request for Hearing Due in 20 days., 74 Motion to Strike Partain's Jury Demand, 55 Motion To Deny Funds To Texas State Bank, 94 Motion for Protective Order, 95 Motion to Amend (related document(s):1 Complaint,)., 103 Order Setting Hearing, 36 Motion For Contempt. Objections/Request for Hearing Due in 20 days., 54 Motion 2008 For Initiation of Criminal Perjury Proceedings, 98 Amended Motion For Summary Judgment. Objections/Request for Hearing Due in 20 days.) Hearing scheduled for 9/20/2005 at 09:00 AM at McAllen, Bentsen Twr W Bush Hwy 83. (mkal,) (Entered: 09/12/2005)
9/12/2005	118	Summons Issued on Texas State Bank Date Issued 9/12/2005. (gcha,) (Entered: 09/14/2005)
9/13/2005	113	Adversary Evidence Submission by Johnny Partain (Attachments: # 1 Exhibit # 2 Exhibit) (gcha,) (Entered: 09/13/2005)
9/13/2005	114	Motion For Summary Judgment. Objections/Request for Hearing Due in 20 days. Filed by Johnny Partain (Attachments: # 1 Proposed Order # 2 Order to Set Hearing) (gcha,) (Entered: 09/13/2005)

9/13/2005	115	Response (related document(s):98 Amended Motion For Summary Judgment. Objections/Request for Hearing Due in 20 days.). Filed by Johnny Partain (Attachments: # 1 Proposed Order # 2 Proposed Order) (gcha,) (Entered: 09/13/2005)
9/13/2005	116	Response (related document(s):101 Motion For Summary Judgment. Objections/Request for Hearing Due in 20 days.). Filed by Johnny Partain (Attachments: # 1 Proposed Order # 2 Proposed Order) (gcha,) (Entered: 09/13/2005)
9/13/2005	117	Response by Johnny Partain (Related document(s):100 Answer to Counterclaim,). (Attachments: # 1 Proposed Order # 2 Proposed Order) (gcha,) (Entered: 09/13/2005)
9/14/2005	119	BNC Certificate of Mailing. (Related document(s):112 Order Setting Hearing, , ,) No. of Notices: 7. Service Date 09/14/2005. (Admin.) (Entered: 09/15/2005)
9/16/2005	120	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through September 16, 2005. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 09/16/2005)
9/18/2005	121	Reply (related document(s):98 Amended Motion For Summary Judgment. Objections/Request for Hearing Due in 20 days.). Filed by Texas State Bank (Skaggs, Vicki) (Entered: 09/18/2005)

9/18/2005	122	Response (related document(s):114 Motion For Summary Judgment. Objections/Request for Hearing Due in 20 days.). Filed by Texas State Bank (Attachments: # 1 Exhibit Attachment B# 2 Proposed Order Denying Partain's Motion for Summary Judgement (Doc. #114)) (Skaggs, Vicki) (Entered: 09/18/2005)
9/19/2005	123	Response (related document(s):55 Motion To Deny Funds To Texas State Bank). Filed by Texas State Bank (Attachments: # 1 Proposed Order Denying Motion to Deny Funds (Doc. #55)) (Skaggs, Vicki) (Entered: 09/19/2005)
9/19/2005	124	Response to Counter-Defendants James H. Maples' and Kathleen Virginia Maples' Motion to Dimsiss and Motion for More Definite Statement Filed by Johnny Partain (Attachments: # 1 Proposed Order) (gcha,) Modified on 9/19/2005 (gcha,). (Entered: 09/19/2005)
9/20/2005	125	Courtroom Minutes. Time Hearing Held: 9:00. Appearances: Kelly McKinnis for the plaintiff, Johnnie Partain for himself, the defendant, Vicki Skaggs & Michael Tuttle for Texas State Bank. Re:29,55. Hearings continued to 12/20/2005 at 09:00 AM at Brownsville, 4th floor. The Court orders that funds are to remain in suspense. (cson,) (Entered: 09/20/2005)

9/20/2005		Hearing Set On (Related document(s):55 Motion To Deny Funds To Texas State Bank). Hearing scheduled for 12/20/2005 at 09:00 AM at Brownsville, 4th floor. (cson,) (Entered: 09/20/2005)
9/20/2005		Courtroom Minutes. Time Hearing Held: 9:00. Appearances: Kelly McKinnis for the plaintiff, Johnnie Partain for himself, the defendant, Vicki Skaggs & Michael Tuttle for Texas State Bank. Re:36,54. James Maples sworn. Mr. Maples direct & cross examined by counsel as to the motion for contempt. Motion for contempt DENIED. The Court also DENIES the motion for criminal perjury (#54). Order to this effect to be prepared & entered by the Court. (cson,) (Entered: 09/20/2005)

9/20/2005	126	Courtroom Minutes. Time Hearing Held: 9:00. Appearances: Kelly McKinnis for the plaintiff, Johnnie Partain for himself, the defendant, Vicki Skaggs & Michael Tuttle for Texas State Bank. Re: 73,95,97, 98, 101. Motion to amend complaint GRANTED. Parties given until 10/4/05 to amend complaint. Responses to be filed by 11/7/05. Movant's motion for summary judgment to be filed by 11/7/05. Responses to the motion for summary judgment, motion to dismiss, or any other dispositive motion to be submitted by 12/6/05. Hearing with respect to dispositive motions scheduled for 12/20/2005 at 09:00 AM at Brownsville, 4th floor. Cutoff for discovery on new matters set for 11/2/05. Order to this effect to be prepared & entered by the Court. (cson,) (Entered: 09/21/2005)
9/20/2005	127	Courtroom Minutes. Time Hearing Held: 9:00. Appearances: Kelly McKinnis for the plaintiff, Johnnie Partain for himself, the defendant, Vicki Skaggs & Michael Tuttle for Texas State Bank. Re: 99. Hearing continued to 12/20/2005 at 09:00 AM at Brownsville, 4th floor. No other action taken.(cson,) (Entered: 09/21/2005)

9/20/2005	128	Courtroom Minutes. Time Hearing Held: 9:00. Appearances: Kelly McKinnis for the plaintiff, Johnnie Partain for himself, the defendant, Vicki Skaggs & Michael Tuttle for Texas State Bank. Re: 94. Hearing continued to 12/20/2005 at 09:00 AM at Brownsville, 4th floor. No other actions taken.(cson,) (Entered: 09/21/2005)
9/20/2005		Courtroom Minutes. Time Hearing Held: 9:00. Appearances: Kelly McKinnis for the plaintiff, Johnnie Partain for himself, the defendant, Vicki Skaggs & Michael Tuttle for Texas State Bank. Re: 74. The Court to enter an order to the extent that Mr. Partain has live complaints for fraud & conspiracy claims that survive a motion to dismiss, that would normally entitle him to a jury trial. Counsel to brief the issue as to whether Mr. Partain waived his right to jury trial by failing to withdraw the reference. (cson,) Modified on 9/21/2005 (cson,). (Entered: 09/21/2005)
9/23/2005	129	Motion to Extend Time to File Weekly Report For Global Limo, Inc. Due September 23, 2005 Filed by James Howard Maples, Virginia Kathleen Maples (Attachments: # 1 Proposed Order Granting Plaintiffs' Motion For Extension of Time to File Weekly Report For Global Limo, Inc. Due September 23, 2005) (McKinnis, Kelly) (Entered: 09/23/2005)

9/25/2005	130	Notice of Filing of Wekly Report For Global Limo, Inc. For The Period Through September 23, 2005. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 09/25/2005)
9/25/2005	131	Amended Motion to Extend Time to File Weekly Report For Global Limo, Inc. Due September 23, 2005 Filed by James Howard Maples, Virginia Kathleen Maples (Attachments: # 1 Proposed Order Granting Plaintiffs' Motion For Extension of Time to File Weekly Report For Global Limo Inc. Due September 23, 2005) (McKinnis, Kelly) (Entered: 09/25/2005)
9/26/2005	132	Order Granting Motion for Leave to File Amended Complaint (Related doc # [95), Denying Motion to Dismiss but Granting Motion for More Definite Statement (Related doc # 100]), Denying Motion to Dismiss, but Granting Motion for More Definite Statement (Related doc # 73), Denying Motion for Contempt (Related doc # 36), Denying Motion for Initiation of Criminal Proceedings (Related doc # 54) and Setting Hearings Signed on 9/26/2005 (Related document(s): 99 Motion for Sanctions. Objections/Request for Hearing Due in 20 days., 74 Motion to Strike Partain's Jury Demand, 55 Motion To Deny Funds To Texas State Bank, 94 Motion for Protective Order) Hearings scheduled for 12/20/2005 at 09:00 AM at Brownsville, 600 E Harrison. (ddar,) (Entered: 09/27/2005)

9/29/2005	133	BNC Certificate of Mailing. (Related document(s):132 Order Setting Hearing, , ,) No. of Notices: 7. Service Date 09/29/2005. (Admin.) (Entered: 09/30/2005)
9/30/2005	134	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through September 30, 2005. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 09/30/2005)
10/3/2005	137	Order Granting Motion to Extend Time to File Weekly Report for Global Limo Inc. Time extended to 9/25/05 (Related Doc # 131) Signed on 10/3/2005. (jezz,) (Entered: 10/04/2005)
10/4/2005	135	Amended Complaint (Related document(s):1 Complaint,) (McKinnis, Kelly) (Entered: 10/04/2005)
10/4/2005	136	Amended Counterclaim by Johnny Partain against James Howard Maples, Virginia Kathleen Maples, Texas State Bank (gcha,) (Entered: 10/04/2005)
10/6/2005	138	BNC Certificate of Mailing. (Related document(s):137 Order on Motion to Extend Time) No. of Notices: 7. Service Date 10/06/2005. (Admin.) (Entered: 10/07/2005)
10/6/2005	140	Motion To Terminate Maples From Global Limo Filed by Counter-Claimant Johnny Partain (Attachments: # 1 Proposed Order) (gcha,) (Entered: 10/11/2005)

10/6/2005	141	Motion to Expedite Hearing (related document(s):140 Motion To Terminate Maples From Global Limo). Filed by Counter-Claimant Johnny Partain (Attachments: # 1 Proposed Order) (gcha,) (Entered: 10/11/2005)
10/7/2005	139	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through October 7, 2005. Filed by James Howard Maples,Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 10/07/2005)
10/11/2005	142	Objection (related document(s):141 Motion to Expedite Hearing (related document(s):140 Motion To Terminate Maples From Global Limo).). Filed by James Howard Maples, Virginia Kathleen Maples (Attachments: # 1 Proposed Order Denying Motion of Johnny Partain For Emergency (Expedited) Hearing to Terminate Maples From Global Limo, Inc.) (McKinnis, Kelly) (Entered: 10/11/2005)
10/11/2005	143	Response (related document(s):141 Motion to Expedite Hearing (related document(s):140 Motion To Terminate Maples From Global Limo).). Filed by Texas State Bank (Attachments: # 1 Proposed Order Denying Motion for Emergency Hearing (Doc. #141)) (Skaggs, Vicki) (Entered: 10/11/2005)
10/14/2005	144	Order Denying Motion to Terminate Maples From Global Limo (Related Doc # 140) Signed on 10/14/2005. (gcha,) (Entered: 10/14/2005)

10/14/2005	145	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through October 14, 2005. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 10/14/2005)
10/17/2005	146	Emergency Motion For Clarification on Extension of Preliminary Injunction Filed by James Howard Maples, Virginia Kathleen Maples (Attachments: # 1 Proposed Order) (McKinnis, Kelly) (Entered: 10/17/2005)
10/17/2005	147	Order Granting Emergency Motion For Clarification on Extension of Preliminary Injunction (Related Doc # 146) Signed on 10/17/2005. (sgue,) (Entered: 10/18/2005)
10/18/2005	148	BNC Certificate of Mailing. (Related document(s):144 Generic Order) No. of Notices: 7. Service Date 10/18/2005. (Admin.) (Entered: 10/19/2005)
10/20/2005	149	BNC Certificate of Mailing. (Related document(s):147 Order on Emergency Motion (Adversary)) No. of Notices: 5. Service Date 10/20/2005. (Admin.) (Entered: 10/21/2005)
10/21/2005	150	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through October 21, 2005. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 10/21/2005)

10/28/2005	151	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through October 28, 2005. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 10/28/2005) Notice of FIling of Weekly Report For Global Limo, Inc. For The Period Through November 4, 2005. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 11/04/2005)
11/4/2005	152	Notice of FIling of Weekly Report For Global Limo, Inc. For The Period Through November 4, 2005. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 11/04/2005)
11/7/2005	153	Answer to Second Amended Counterclaim Filed by Texas State Bank (Attachments: # 1 Exhibit 1# 2 Exhibit 2# 3 Proposed Order Granting Texas State Bank's Motion to Dismiss)(Skaggs, Vicki) (Entered: 11/07/2005)
11/7/2005	154	Amended Motion to Dismiss Adversary Proceeding. Objections/Request for Hearing Due in 20 days. Filed by Texas State Bank Hearing scheduled for 12/20/2005 at 09:00 AM at McAllen, Bentsen Twr W Bush Hwy 83. (Attachments: # 1 Exhibit 1# 2 Exhibit 2# 3 Proposed Order Granting Texas State Bank's Motion to Dismiss) (Skaggs, Vicki) (Entered: 11/07/2005)
11/7/2005	155	Amended Motion For Summary Judgment. Objections/Request for Hearing Due in 20 days. Filed by Texas State Bank (Attachments: # 1 Exhibit 1

		- Affidavit of P Moxley# 2 Exhibit 2 - Tredaway Affidavit# 3 Exhibit 3 - Murray Affidavit# 4 Exhibit 4 - Claims Registry# 5 Exhibit 5 - Supplement to Disclosure Statement# 6 Exhibit 6 - State Court Docket Sheet# 7 Exhibit 7 - Final judgment# 8 Exhibit 8 - Amended Final Judgment# 9 Exhibit 9 Second Amended Final judgment# 10 Exhibit 10 - Third Amended Final Judgment# 11 Exhibit 11 - Account Turnover Order# 12 Exhibit 12 - Stock Turnover Order# 13 Exhibit 13 - KBM Bus Turnover Order# 14 Exhibit 14 - Mineral Rights Turnover Order# 15 Exhibit 15 - Stay order# 16 Exhibit 16 - Order Setting Aside Stay# 17 Exhibit 17 - Schedules# 18 Exhibit 18 - POC (IRS)# 19 Exhibit 19 - POC JT Partain# 20 Exhibit 20 - POC JT Partain# 21 Exhibit 21 - POC Option One# 22 Exhibit 22 - POC McAllen# 23 Exhibit 23 - POC Pharr# 24 Exhibit 24 - POC Hidalgo County# 25 Exhibit 25 - POC Pharr ISD# 26 Exhibit 26 - POC TSB 105,234# 27 Exhibit 27 - POC TSB 52,959# 28 Exhibit 28 - POC TSB 45,590.11# 29 Exhibit 29 - POC TSB 182,489.27# 30 Exhibit 30 - POC Luna 1# 31 Exhibit 31- POC Luna# 32 Exhibit 32 - Supplemental Motion for Authority to Avoid# 33 Exhibit 33 - Supplemental Motion for Authority to Avoid# 34 Exhibit 34 - Order Denying Supplemental Motion to Avoid# 35 Exhibit 35 - Order Denying Motion to Avoid# 36 Proposed Order Granting MSJ) (Skaggs, Vicki) (Entered:

		11/07/2005)
11/7/2005	156	Motion to Dismiss Adversary Proceeding. Objections/Request for Hearing Due in 20 days. Filed by James Howard Maples, Virginia Kathleen Maples Hearing scheduled for 12/20/2005 at 09:00 AM at McAllen, Bentsen Twr W Bush Hwy 83. (Attachments: # 1 Exhibit 1# 2 Exhibit 2# 3 Proposed Order Granting Counter-Defendants' Motion to Dismiss) (McKinnis, Kelly) (Entered: 11/07/2005)
11/7/2005	157	Answer to Johnny Partain's Second Amended Counterclaim Filed by James Howard Maples, Virginia Kathleen Maples (Attachments: # 1 Exhibit 1# 2 Exhibit 2)(McKinnis, Kelly) (Entered: 11/07/2005)

11/7/2005	158	Motion For Summary Judgment. Objections/Request for Hearing Due in 20 days. Filed by James Howard Maples, Virginia Kathleen Maples (Attachments: # 1 Exhibit 1# 2 Exhibit 2# 3 Exhibit 3# 4 Exhibit 4# 5 Exhibit 5# 6 Exhibit 6# 7 Exhibit 7# 8 Exhibit 8# 9 Exhibit 9# 10 Exhibit 10# 11 Exhibit 11# 12 Exhibit 12# 13 Exhibit 13# 14 Exhibit 14# 15 Exhibit 15# 16 Exhibit 16# 17 Exhibit 17# 18 Exhibit 18# 19 Exhibit 19# 20 Exhibit 20# 21 Exhibit 21# 22 Exhibit 22# 23 Exhibit 23# 24 Exhibit 24# 25 Exhibit 25# 26 Exhibit 26# 27 Exhibit 27# 28 Exhibit 28# 29 Exhibit 29# 30 Exhibit 30# 31 Exhibit 31# 32 Exhibit 32# 33 Exhibit 33# 34 Exhibit 34# 35 Exhibit 35# 36 Proposed Order) (McKinnis, Kelly) (Entered: 11/08/2005)
11/11/2005	159	Motion to Extend Time to File Weekly Report of Global Limo, Inc. Due November 11, 2005 Filed by James Howard Maples, Virginia Kathleen Maples (Attachments: # 1 Proposed Order Granting Plaintiffs' Motion For Extension of Time to FIle Weekly Report of Global Limo, Inc. Due November 11, 2005) (McKinnis, Kelly) (Entered: 11/11/2005)
11/13/2005	160	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through November 11, 2005. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 11/13/2005)

11/14/2005	161	Second Motion For Summary Judgment. Objections/Request for Hearing Due in 20 days. Filed by Counter-Claimant Johnny Partain (gcha,) Additional attachment(s) added on 11/16/2005 (gcha,). (Entered: 11/14/2005)
11/14/2005	162	Brief Filed by Johnny Partain (gcha,) (Entered: 11/14/2005)
11/18/2005	163	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through November 18, 2005. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 11/18/2005)
11/18/2005	164	Order Granting Motion to Extend Time (Related Doc # 159) Signed on 11/18/2005. (mkal,) (Entered: 11/21/2005)
11/23/2005	165	BNC Certificate of Mailing. (Related document(s):164 Order on Motion to Extend Time) No. of Notices: 5. Service Date 11/23/2005. (Admin.) (Entered: 11/24/2005)
11/25/2005	166	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through November 25, 2005. Filed by James Howard Maples,Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 11/25/2005)
11/25/2005	167	Summons Service Executed on Texas State Bank 11/21/2005. (gcha,) (Entered: 11/25/2005)

11/29/2005	168	Motion To Preserve Global Limo, Inc. And For Judge Schmidt and Judge Isgar To Confer And Determine Responsiblity To Global And Partain (No Order Attached) Filed by Defendant Johnny Partain (gcha,) (Entered: 11/29/2005)
11/29/2005	169	Motion to Set Hearing (related document(s):168 Motion To Preserve Global Limo, Inc. And For Judge Schmidt and Judge Isgar To Confer And Determine Responsiblity To Global And Partain (No Order Attached)). Filed by Defendant Johnny Partain (Attachments: # 1 Proposed Order) (gcha,) (Entered: 11/29/2005)
11/29/2005	170	Objection (related document(s):169 Motion to Set Hearing (related document(s):168 Motion To Preserve Global Limo, Inc. And For Judge Schmidt and Judge Isgar To Confer And Determine Responsiblity To Global And Partain (No Order Attached)).). Filed by James Howard Maples, Virginia Kathleen Maples (Attachments: # 1 Proposed Order Denying Johnny Partain's Motion For Emergency Hearing And Response to Protect Global Limo, Inc. And Johnny Partain) (McKinnis, Kelly) (Entered: 11/29/2005)
12/2/2005	171	Order (Adversary) Denying Emergency Relief Signed on 12/2/2005. (Copy sent to Judge Schmidt, Judge Crane by US Mail on 12/2/05) (mkadlub,) (Entered: 12/02/2005)

12/2/2005	172	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through December 2, 2005. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 12/02/2005)
12/4/2005	173	BNC Certificate of Mailing. (Related document(s):171 Generic Order (Adversary)) No. of Notices: 7. Service Date 12/04/2005. (Admin.) (Entered: 12/05/2005)
12/6/2005	174	Response (related document(s):161 Second Motion For Summary Judgment. Objections/Request for Hearing Due in 20 days.). Filed by Texas State Bank (Attachments: # 1 Exhibit 1# 2 Proposed Order Denying Partain's 2nd Motion for Summary Judgment) (Skaggs, Vicki) (Entered: 12/06/2005)
12/6/2005	175	Response (related document(s):161 Second Motion For Summary Judgment. Objections/Request for Hearing Due in 20 days.). Filed by James Howard Maples, Virginia Kathleen Maples (Attachments: # 1 Proposed Order Denying Johnny Partain's Second Motion For Summary Judgment) (McKinnis, Kelly) (Entered: 12/06/2005)
12/9/2005	176	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through December 9, 2005. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 12/09/2005)

12/12/2005	177	Amended Counterclaim by Johnny Partain against James Howard Maples, Virginia Kathleen Maples, Texas State Bank (gcha,) (Entered: 12/12/2005)
12/16/2005	178	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through December 16, 2005. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 12/16/2005)
12/19/2005	179	Response (related document(s):101 Motion For Summary Judgment. Objections/Request for Hearing Due in 20 days., 155 Amended Motion For Summary Judgment. Objections/Request for Hearing Due in 20 days.). Filed by Johnny Partain (Attachments: # (1) Proposed Order) (gcha,) (Entered: 12/19/2005)
12/19/2005	180	Response (related document(s):154 Amended Motion to Dismiss Adversary Proceeding. Objections/Request for Hearing Due in 20 days.). Filed by Johnny Partain (Attachments: # 1 Proposed Order) (gcha,) (Entered: 12/19/2005)
12/19/2005	181	Reply (related document(s):155 Amended Motion For Summary Judgment. Objections/Request for Hearing Due in 20 days.). Filed by Texas State Bank (Attachments: # 1 Proposed Order Granting Texas State Bank's Amended Motion to Dismiss and Amended Motion for Summary Judgment) (Skaggs, Vicki) (Entered: 12/19/2005)

12/20/2005		Courtroom Minutes. Time Hearing Held: 9:00. Appearances: Vicki Skaggs, Texas State Bank; Kelly K McKinnis - James Howard Maples and Virginia Kathleen Maples; Johnny Partain, pro se. (Related document(s): 29 Notice of Note Payments, 55 Motion To Deny Funds To Texas State Bank, 74 Motion to Strike Partain's Jury Demand, 94 Motion for Protective Order, 99 Motion for Sanctions, 101 Motion For Summary Judgment, 154 Amended Motion to Dismiss Adversary Proceeding, 155 Amended Motion For Summary Judgment, 156 Motion to Dismiss Adversary Proceeding , 161 Second Motion For Summary Judgment.) 99 Motion for Sanctions to be continued. All motions taken under advisement. Order to be issued. (kmur,) (Entered: 12/20/2005)
12/23/2005	185	Notice of Bankruptcy. Filed by Johnny Partain (jezz,) (Entered: 12/28/2005)
12/27/2005	182	Transcript RE: TRO Hearing hearing held on March 29, 2005 before the Honorable Marvin Isgur . Transcript is available for viewing in the office of the clerk fileroom.. (bgoo,) (Entered: 12/27/2005)
12/27/2005	183	Transcript RE: Status Conference/ Motion for Contempt/ Injunction Hearing hearing held on April 19, 2005 before the Honorable Marvin Isgur. Transcript is available for viewing in the office of the clerk fileroom.. (bgoo,) (Entered: 12/27/2005)

12/27/2005	184	Transcript RE: Status Conference/ Motion for Contempt/ Injunction hearing held on May 9, 2005 before the Honorable Marvin Isgur . Partial Transcript Excluding Ruling. Transcript is available for viewing in the office of the clerk fileroom. (bgoo,) (Entered: 12/27/2005)
12/31/2005	186	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through December 30, 2005. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 12/31/2005)
1/7/2006	187	Notice of Filing of Amended Weekly Report For Global Limo, Inc. For The Period Through December 30, 2005. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 01/07/2006)
1/7/2006	188	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through January 6, 2006. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 01/07/2006)
1/7/2006	189	Motion to Extend Time to File Weekly Report For Global Limo, Inc. Due January 6, 2006 Filed by James Howard Maples, Virginia Kathleen Maples (Attachments: # 1 Proposed Order Granting Plaintiffs' Motion For Extension of Time to File Weekly Report For Global Limo, Inc. Due January 6, 2006) (McKinnis, Kelly) (Entered: 01/07/2006)

1/12/2006	190	Order Granting Motion to Extend Time to File Weekly Report for Global Limo (until 1/7/06) (Related Doc # 189) Signed on 1/12/2006. (sgue,) (Entered: 01/13/2006)
1/13/2006	191	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through January 13, 2006. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 01/13/2006)
1/15/2006	192	BNC Certificate of Mailing. (Related document(s):190 Order on Motion to Extend Time) No. of Notices: 7. Service Date 01/15/2006. (Admin.) (Entered: 01/16/2006)
1/17/2006	193	Objection to Texas State Bank's Untimely Responses to Summary Judgment, Or Alternatively, Response to Texas State Bank's Response Filed by Johnny Partain (Related document(s):181 Reply,) (Attachments: # 1 Proposed Order) (gcha,) (Entered: 01/17/2006)
1/20/2006	194	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through January 20, 2006. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 01/20/2006)

1/26/2006	195	Memorandum Opinion of Bankruptcy Judge Signed on 1/26/2006 Denying (Related document(s):161 Second Motion For Summary Judgment. Objections/Request for Hearing Due in 20 days., Granting 155 Amended Motion For Summary Judgment and Granting in Part and Denying in Part (related document 158) Objections/Request for Hearing Due in 20 days.) (smur,) (Entered: 01/26/2006)
1/27/2006		Per (related document #195) Hearing Set On (Related document(s):1 Complaint,). Trial date set for 4/18/2006 at 09:00 AM at McAllen, Bentsen Twr W Bush Hwy 83. (smur,) (Entered: 01/27/2006)
1/28/2006	196	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through January 27, 2006. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 01/28/2006)
1/28/2006	199	BNC Certificate of Mailing. (Related document(s):195 Opinion,) No. of Notices: 7. Service Date 01/28/2006. (Admin.) (Entered: 01/29/2006)
1/29/2006	197	Motion to Extend Time to File Weekly Report For Global Limo, Inc. Due January 27, 2006 Filed by James Howard Maples, Virginia Kathleen Maples (Attachments: # 1 Proposed Order Granting Plaintiffs' Motion For Extension of Time to File Weekly Report For Global Limo, Inc. Due January 27, 2006) (McKinnis, Kelly) (Entered: 01/29/2006)

1/29/2006	198	Motion to Dispense With Necessity of Filing Weekly Reports For Global Limo, Inc. In Light of Summary Judgment Filed by James Howard Maples, Virginia Kathleen Maples (Attachments: # 1 Proposed Order Granting Plaintiffs' Motion to Dispense With Requirement of Filing Weekly Reports For Global Limo, Inc. In Light of Summary Judgment) (McKinnis, Kelly) (Entered: 01/29/2006)
1/31/2006	200	Notice of Bankruptcy. Filed by Johnny Partain (gcha,) (Entered: 01/31/2006)
2/1/2006	201	Order Granting Motion to Extend Time to File Weekly Report (Related Doc # 197) Signed on 2/1/2006. (ddar,) (Entered: 02/01/2006)
2/3/2006	202	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through February 3, 2006. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 02/03/2006)
2/3/2006	203	BNC Certificate of Mailing. (Related document(s):201 Order on Motion to Extend Time) No. of Notices: 7. Service Date 02/03/2006. (Admin.) (Entered: 02/04/2006)
2/6/2006	204	Motion to Vacate. Objections/Request for Hearing Due in 20 days (related document(s):195 Opinion,). Filed by Counter-Claimant Johnny Partain (gcha,) Additional attachment(s) added on 2/6/2006 (gcha,). (Entered: 02/06/2006)

2/10/2006	205	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through February 10, 2006. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 02/10/2006)
2/17/2006	206	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through February 17, 2006. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 02/17/2006)
2/21/2006	207	Response (related document(s):204 Motion to Vacate. Objections/Request for Hearing Due in 20 days (related document (s):195 Opinion,).). Filed by Texas State Bank (Attachments: # 1 Proposed Order Denying Motion to Vacate Summary Judgment) (Skaggs, Vicki) (Entered: 02/21/2006)
2/23/2006	208	Response (related document(s):204 Motion to Vacate. Objections/Request for Hearing Due in 20 days (related document (s):195 Opinion,).). Filed by James Howard Maples, Virginia Kathleen Maples (Attachments: # 1 Proposed Order Denying Defendant's Motion to Vacate) (McKinnis, Kelly) (Entered: 02/23/2006)
2/25/2006	209	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through February 24, 2006. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 02/25/2006)

3/3/2006	210	Notice of Filing of Weekly Report For Global Limo, Inc. For The Period Through March 3, 2006. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 03/03/2006)
3/3/2006	211	Order Granting Motion to Dispense with Requirement of Filing Weekly Reports for Global Limo Inc in Light of Summary Judgment (Related Doc # 198) Signed on 3/3/2006. (ddar,) (Entered: 03/07/2006)
3/9/2006	212	BNC Certificate of Mailing. (Related document(s):211 Generic Order) No. of Notices: 7. Service Date 03/09/2006. (Admin.) (Entered: 03/10/2006)
3/31/2006	213	Order Denying Motion To Reconsider (Related Doc # 204) Signed on 3/31/2006. (gcha,) (Entered: 03/31/2006)
4/2/2006	214	BNC Certificate of Mailing. (Related document(s):213 Order on Motion to Vacate) No. of Notices: 7. Service Date 04/02/2006. (Admin.) (Entered: 04/03/2006)

4/11/2006	215	Emergency Motion to Clarify Memorandum Opinio on Summary Judgment or, Alternatively, Motion to Set Aside Transfers Filed by Texas State Bank Hearing scheduled for 4/18/2006 at 09:00 AM at Brownsville, 600 E Harrison. (Attachments: # 1 Exhibit A--Partain's Second Request for Findings of Fact and Conclusions of Law# 2 Exhibit B--Motion to Enforce Automatic Stay# 3 Exhibit C-Motion for Turnover of Global Limo's Assets# 4 Proposed Order Granting Texas State Bank's Motion to Clarify) (Skaggs, Vicki) (Entered: 04/11/2006)
4/11/2006	216	Agreed Motion to Expedite Hearing (related document(s):215 Emergency Motion to Clarify Memorandum Opinio on Summary Judgment or, Alternatively, Motion to Set Aside Transfers). Filed by Texas State Bank (Attachments: # 1 Exhibit A--Second Request for Findings of Fact and Conclusions of Law# 2 Exhibit B--Motion for Turnover of Global Limo's Assets# 3 Proposed Order Granting Expedited Hearing on TSB's Motion to Clarify (Doc. #215)) (Skaggs, Vicki) (Entered: 04/11/2006)
4/11/2006	217	Order Granting Motion to Expedite Hearing (Related Doc # 216) Signed on 4/11/2006. Hearing on 215 Emergency Motion to Clarify Memorandum Opinion on Summary Judgment, or, alternatively, Motion to Set Aside Transfers is scheduled for 4/18/2006 at 09:00 AM at Brownsville, 600 E Harrison. (ddar,) (Entered: 04/11/2006)

4/13/2006	218	BNC Certificate of Mailing. (Related document(s):217 Order on Motion to Expedite Hearing,) No. of Notices: 7. Service Date 04/13/2006. (Admin.) (Entered: 04/14/2006)
4/14/2006	219	Order Regarding Trial Venue Signed on 4/14/2006 (gluc,) (Entered: 04/14/2006)
4/14/2006	220	Motion to Clarify Filed by James Howard Maples, Virginia Kathleen Maples (Attachments: # 1 Proposed Order) (McKinnis, Kelly) (Entered: 04/14/2006)
4/16/2006	221	BNC Certificate of Mailing. (Related document(s):219 Generic Order (Adversary)) No. of Notices: 7. Service Date 04/16/2006. (Admin.) (Entered: 04/16/2006)
4/18/2006	222	Notice of Intention to File Motion For Order to Show Cause. Filed by James Howard Maples, Virginia Kathleen Maples (McKinnis, Kelly) (Entered: 04/18/2006)

4/18/2006		Courtroom Minutes. Time Hearing Held: 9:00. Appearances: Johnny Partain - Pro Se; Kelly McKinnis - James Howard Maples; Vicki Skaggs - Texas State Bank (Related document(s):215 Emergency Motion to Clarify Memorandum Opinio on Summary Judgment or, Alternatively, Motion to Set Aside Transfers) Johnny Partain was sworn and testified before the Court. Mr. Partain offered exhibits 19 and 20 which were admitted into evidence. Exhibits marked Partain 1-4 were additionally admitted into evidence. The Court announced its findings on the record. Mr. Partain's claim will be held in the final judgment. The Court mooted the emergency motion 215. The Court announced that it will be issuing a final judgment in this matter and requested input from the parties as to other issues they think should be included in that final judgment. (edie) (Entered: 04/18/2006)
4/19/2006	223	Motion To Disqualify Judge and Response To Plaintiffs' Notice of Intention To File Motion for Order To Show Cause Filed by Defendant Johnny Partain (Attachments: # 1 Certificate of Service# 2 Proposed Order) (gcha,) (Entered: 04/24/2006)

4/25/2006	224	Response (related document(s):223 Motion To Disqualify Judge and Response To Plaintiffs' Notice of Intention To File Motion for Order To Show Cause). Filed by Texas State Bank (Attachments: # 1 Proposed Order Denying Motion to Disqualify Judge (Doc. #223)) (Skaggs, Vicki) (Entered: 04/25/2006)
4/27/2006	225	Judgment Signed on 4/27/2006 (sgue,) (Entered: 05/01/2006)
4/27/2006	226	Motion To Stay (related document(s):225 Judgment (Adversary)). Filed by Johnny Partain (Attachments: # 1 Proposed Order) (gcha,) (Entered: 05/03/2006)
4/27/2006	227	Notice of Appeal Filed by Counter-Claimant Johnny Partain. (related document(s):225 Judgment (Adversary)). Receipt Number 0,Fee Amount $255. Appellant Designation due by 5/8/2006. (gcha,) (Appeal No. 06-14) Modified on 5/3/2006 (gcha,). (Entered: 05/03/2006)
5/1/2006		Adversary Case 7-05-ap-07009 Closed. (sgue,) (Entered: 05/01/2006)
5/3/2006	228	BNC Certificate of Mailing. (Related document(s):225 Judgment (Adversary)) No. of Notices: 7. Service Date 05/03/2006. (Admin.) (Entered: 05/04/2006)
5/4/2006		Receipt Number 970924, Fee Amount $255.00. (Related document (s):227 Notice of Appeal) (vrio,) (Entered: 05/05/2006)

5/8/2006	229	Certificate of Interested Persons Filed by Johnny Partain (gcha,) (Entered: 05/10/2006)
5/10/2006	230	Appellant Designation of Contents For Inclusion in Record On Appeal (related document(s):227 Notice of Appeal). (gcha,) (Entered: 05/10/2006)
5/10/2006	231	Motion To Stay. Filed by Defendant Johnny Partain (Attachments: # 1 Proposed Order) (gcha,) (Entered: 05/10/2006)
5/15/2006	232	Clerk's Notice of Filing of an Appeal under Bankruptcy Rule 8004. On 4/27/06, Johnny Partain filed a notice of appeal. The appeal has been assigned to U.S. District Judge Ricardo H. Hinojosa, Civil Action 06-cv-137. Parties notified (Related document(s):227 Notice of Appeal) (Our Appeal No. 06-14) (gcha,) (Entered: 05/15/2006)
5/17/2006	233	BNC Certificate of Mailing. (Related document(s):232 Clerk's Notice of Filing of an Appeal under Bankruptcy Rule 8004,) No. of Notices: 7. Service Date 05/17/2006. (Admin.) (Entered: 05/18/2006)
5/19/2006	234	234 Response (related document(s):231 Motion To Stay.). Filed by Texas State Bank (Attachments: # 1 Proposed Order Denying Motion to Stay) (Skaggs, Vicki) (Entered: 05/19/2006)

5/19/2006	235	Appellee Designation of Contents for Inclusion in Record of Appeal (related document(s):227 Notice of Appeal, 230 Appellant Designation). (Attachments: # 1 Exhibit Docket No. 1# 2 Exhibit Docket No. 11# 3 Exhibit Docket No. 39# 4 Exhibit Docket No. 42# 5 Exhibit Docket No. 132# 6 Exhibit Docket No. 135# 7 Exhibit Docket No. 147# 8 Exhibit Docket No. 213# 9 Exhibit Docket No. 224)(Skaggs, Vicki) (Entered: 05/19/2006)
5/22/2006	237	Appellee Designated Record on Appeal (related document(s):235 Appellee Designation,, 227 Notice of Appeal). (Attachments: # 1 Continuation# 2 Continuation 2)(jbra,) Text Modified on 5/23/2006 (jbra,). (Entered: 05/23/2006)
5/23/2006	236	Notice of Docketing an Appeal under Bankruptcy Rule 8007(b). Assigned Judge Jidge Ricardo H. Hinojosa, Civil Action 06-CV-137. All appellate filings must now be made in the United States District Court with the civil action caption and case number. Parties notified (Related document(s):227 Notice of Appeal) (Our Appeal No. 06-14) (This 8007 Notice was mailed to the McAllen District Court on 5/23/06 via fed-ex) (gcha,) (Entered: 05/23/2006)
5/25/2006	238	Order Regarding Partain's Motion To Disqualify Signed on 5/25/2006 (gcha,) (Entered: 05/25/2006)

5/25/2006	239	BNC Certificate of Mailing. (Related document(s):236 Notice of Docketing an Appeal under Bankruptcy Rule 8007(b), Notice of Docketing an Appeal under Bankruptcy Rule 8007(b)) No. of Notices: 7. Service Date 05/25/2006. (Admin.) (Entered: 05/26/2006)
5/27/2006	240	BNC Certificate of Mailing. (Related document(s):238 Generic Order) No. of Notices: 7. Service Date 05/27/2006. (Admin.) (Entered: 05/28/2006)
6/1/2006	241	Supplemental Response (related document(s):231 Motion To Stay.). Filed by Texas State Bank (Attachments: # 1 Exhibit State Court Pleadings certified# 2 Proposed Order) (Skaggs, Vicki) (Entered: 06/01/2006)
6/12/2006	242	Order Denying Partain's Motion to Disqualify (Related Doc # 223) Signed on 6/12/2006. (mkal,) (Entered: 06/14/2006)
6/14/2006	243	Order Denying Emergency Motion For Stay of Judgment (Related Doc # 231) Signed on 6/14/2006. (ghas) (Entered: 06/14/2006)
6/16/2006	244	BNC Certificate of Mailing. (Related document(s):242 Generic Order) No. of Notices: 7. Service Date 06/16/2006. (Admin.) (Entered: 06/17/2006)
6/16/2006	245	BNC Certificate of Mailing. (Related document(s):243 Order on Motion to Stay) No. of Notices: 7. Service Date 06/16/2006. (Admin.) (Entered: 06/17/2006)

7/5/2006	246	Transcript RE: Trial/Motion for Clarification hearing held on 4/18/2006, before the Honorable Marvin Isgur . Transcript is available for viewing in the office of the clerk fileroom. (Related document(s): Courtroom Minutes (Text), (dcla,) (Entered: 07/05/2006)
7/5/2006	247	Transcript RE: Motions Hearing hearing held on 12/20/2005, before the Honorable Marvin Isgur . Transcript is available for viewing in the office of the clerk fileroom. (Related document(s): Courtroom Minutes, , ,). (dcla,) (Entered: 07/05/2006)
10/30/2006	248	Motion to Withdraw as Attorney. Objections/Request for Hearing Due in 20 days. Filed by Kelly K. McKinnis (Attachments: # 1 Proposed Order Granting Attorney Kelly K. McKinnis' Motion to Withdraw as Counsel For Plaintiffs) (McKinnis, Kelly) (Entered: 10/30/2006)
10/30/2006	249	Motion For Contempt. Objections/Request for Hearing Due in 20 days., Motion for Order to Show Cause Filed by James Howard Maples, Virginia Kathleen Maples (Attachments: # 1 Proposed Order) (kettac,) (Entered: 11/01/2006)
11/20/2006	250	Response To Plaintiffs' Order to Show Cause And (related document (s):249 Motion For Contempt. Objections/Request for Hearing Due in 20 days. Motion for Order to Show Cause). Filed by Johnny Partain (Attachments: # 1 Proposed Order) (gcha,) Modified on 11/21/2006 (gcha,). (Entered: 11/21/2006)

11/30/2006	251	Order Setting Hearing Signed on 11/30/2006 (Related document (s):249 Motion For Contempt. Motion for Order to Show Cause, 248 Motion to Withdraw as Attorney.) Hearing scheduled for 1/22/2007 at 11:00 AM at McAllen, Bentsen Twr W Bush Hwy 83. (gcha,) (Entered: 11/30/2006)
12/2/2006	252	BNC Certificate of Mailing. (Related document(s):251 Order Setting Hearing,) No. of Notices: 8. Service Date 12/02/2006. (Admin.) (Entered: 12/02/2006)
1/22/2007		Courtroom Minutes. Time Hearing Held: 11:00 am. Appearances: Kelly McKinnis - James and Virginia Maples; James Maples, Pro Se Plaintiff; Johnny Partain - Pro Se Defendant; Vicki Skaggs - Texas State Bank (Related document(s):248 Motion to Withdraw as Counsel, 249 Motion for Contempt). The Court heard the motion to withdraw as counsel filed by Mr. McKinnis first. The Court granted the motion to withdraw. Court order to be issued. The Court then heard the motion for contempt. James Maples was sworn and provided testimony. The Court limited the hearing to civil contempt issues only and will not hear criminal contempt issues. Plaintiff's exhibits 1, 2, 3, 10 and 12 were admitted into evidence. An oral motion by the defendant to continue the hearing so that the defendant could obtain a transcript of a prior hearing was denied by the Court. Court exhibit 1 was admitted into evidence. The

		Court announced its findings. Pursuant to the Court, Defendant Partain shall pay $4,450 within 2 business days. If Mr. Partain does not comply, he will be required to pay an additional $250 per day. The parties are required to file a certificate of compliance with the Court by 1/31/2007. The Court will conduct a further hearing by televideo on 2/27/2007 at 01:30 PM at Brownsville, 600 E Harrison (MI). If Mr. Partain has not complied with the Court's order by the 2/27/2007, the Court will consider whether there is alternative relief that is required to coerce compliance with the Court's judgment. Court order to be issued. (ghas) (Entered: 01/24/2007)
1/23/2007	253	Memorandum Opinion on Plaintiffs' Motion for Contempt Signed on 1/23/2007. Hearing to be held on 2/27/2007 at 01:30 PM at Brownsville, 600 E Harrison. (noch,) (Entered: 01/23/2007)
1/23/2007	254	Order Holding Johnny Partain in Civil Contempt (Related Doc # 249), Signed on 1/23/2007. (noch,) (Entered: 01/23/2007)
1/23/2007	255	The Case Manager called Mr. Partain on 1/23/7 to obtain his fax number. She faxed a copy of Doc. #253 and #254 on 1/23/7 to Mr. Johnny Partain at 956-687-4966. (aain) (Entered: 01/23/2007)
1/25/2007	256	BNC Certificate of Mailing. (Related document(s):253 Order Setting Hearing) No. of Notices: 8. Service Date 01/25/2007. (Admin.) (Entered: 01/26/2007)

1/26/2007	257	BNC Certificate of Mailing. (Related document(s):254 Order on Motion for Contempt, Generic Order) No. of Notices: 8. Service Date 01/26/2007. (Admin.) (Entered: 01/27/2007)
1/30/2007	258	Response to Order And Memorandum Opinion on Plaintiff's Motion For Contempt And Order For Contempt. (Filed By Johnny Partain). (Related document(s):253 Order Setting Hearing) (Attachments: # 1 Proposed Order) (gcha,) (Entered: 01/30/2007)
1/31/2007	259	Certificate of Non-Compliance (Filed By James Howard Maples, Virginia Kathleen Maples).(Related document(s):254 Order on Motion for Contempt, Generic Order) (McKinnis, Kelly) (Entered: 01/31/2007)
2/1/2007	260	Order Denying Motion for Reconsideration (Adversary) Signed on 2/1/2007 (ltre,) (Entered: 02/01/2007)
2/1/2007	261	A copy of Doc. #260, Order Denying Motion for Reconsideration, was sent by certified mail to Johnny Partain, 7020 N. 16th Street, McAllen, Texas 78504. (aain) (Entered: 02/01/2007)
2/2/2007	262	Order Setting Hearing Signed on 2/2/2007 (Related document(s):1 Complaint,) Hearing scheduled for 2/27/2007 at 09:00 AM at McAllen, Bentsen Twr W Bush Hwy 83. (sbyrum,) (Entered: 02/02/2007)
2/3/2007	263	BNC Certificate of Mailing. (Related document(s):260 Generic Order (Adversary)) No. of Notices: 8. Service Date 02/03/2007. (Admin.) (Entered: 02/03/2007)

2/4/2007	264	BNC Certificate of Mailing. (Related document(s):262 Order Setting Hearing) No. of Notices: 8. Service Date 02/04/2007. (Admin.) (Entered: 02/04/2007)
2/9/2007	265	Certified Mail Receipt Return as to Order DE #260 (kcar,) (Entered: 02/12/2007)
2/16/2007	266	Order Granting Attorney Kelly McKinnis' Motion To Withdraw (Related Doc # 248) Signed on 2/16/2007. (aain) (Entered: 02/16/2007)
2/18/2007	267	BNC Certificate of Mailing. (Related document(s):266 Order on Motion to Withdraw as Attorney) No. of Notices: 8. Service Date 02/18/2007. (Admin.) (Entered: 02/18/2007)
2/26/2007	268	Second Motion For Disqualification of Judge Isgur and Notice of Criminal Complaint Against Judge Isgur And Other Parties Hereto Filed by Defendant Johnny Partain (Attachments: # 1 Proposed Order) (gcha,) (Entered: 02/26/2007)
2/27/2007	269	Order Finding Contempt And Requiring Incarceration Signed on 2/27/2007 (gcha,) (Entered: 02/27/2007)
2/27/2007		Courtroom Minutes. Time Hearing Held: 9:00 am. Appearances: James Maples, Pro Se Plaintiff; Johnny Partain - Pro Se Defendant; Hector Gonzales - Johnny Partain (contempt matter); Vicki Skaggs - Texas State Bank (Related document(s):1 Complaint, 268 Motion to Recuse). The Court took up the defendant's motion to recuse at docket entry #268. Johnny

		Partain was sworn and provide testimony. Defendant's exhibits 1 - 3 were admitted into evidence. The Court questioned Mr. Partain regarding the existence of any allegations of wrongful conduct by the Court. The Court announced its findings and denied the motion to recuse. Court order signed. The Court then moved on to the question of contempt. Hector Gonzales represented Johnny Partain on this issue. Johnny Partain, being previously sworn, provided testimony. Mr. Gonzales addressed the Court regarding Mr. Partain's ability to pay. Mr. Partain declared that he is unable to pay and cannot formulate a payment schedule. The Court found Johnny Partain in contempt and the Court ordered immediate incarceration. Court order signed. (ghas) (Entered: 03/07/2007)
2/28/2007	270	Order Denying Motion for Recusal (Related Doc # 268) Signed on 2/28/2007. (aain) (Entered: 02/28/2007)
3/1/2007	271	BNC Certificate of Mailing. (Related document(s):269 Generic Order) No. of Notices: 8. Service Date 03/01/2007. (Admin.) (Entered: 03/02/2007)
3/2/2007	272	BNC Certificate of Mailing. (Related document(s):270 Generic Order) No. of Notices: 8. Service Date 03/02/2007. (Admin.) (Entered: 03/03/2007)
3/14/2007	273	Order Regarding Johnny Partain Signed on 3/14/2007 (aain) (Entered: 03/14/2007)

3/14/2007	274	A copy of Doc. #273 was faxed on 3/14/7 by the Court's Case Manager to Hector Gonzales at 361-668-0327 and the U. S. Marshal in McAllen, Texas at 956-618-8186. (aain) (Entered: 03/14/2007)
3/16/2007	275	BNC Certificate of Mailing. (Related document(s):273 Generic Order) No. of Notices: 8. Service Date 03/16/2007. (Admin.) (Entered: 03/17/2007)
5/23/2007	276	Request Concerning Replacement of Appeals Record by Johnny Partain . (jezz,) (Entered: 05/24/2007)
6/4/2007	277	Response (Filed By Texas State Bank).(Related document(s):276 Document) (Skaggs, Vicki) (Entered: 06/04/2007)
6/5/2007	279	Objection to Untimely Record on Appeal and Conditional Request for Inclusion Filed by Texas State Bank (dcla,) Modified on 6/8/2007 (dcla,). (Entered: 06/08/2007)
6/6/2007	278	A Certified Notice To The Circuit Of Supplemental Documents (#277, 276) was mailed June 7, 2007, via UPS. (gcha,) (Entered: 06/06/2007)
6/15/2007	281	Objection to Texas State Bank's 279 Objection. Filed by Johnny Partain (ddar,) Text Modified on 6/27/2007 (ddar,). (Entered: 06/27/2007)
6/20/2007	280	Notice To The Circuit Of Supplemental Documents (Mailed via UPS on 6/21/07). (Related document(s):227 Notice of Appeal, 230 Appellant Designation) Filed by Johnny Partain (gcha,) (Entered: 06/20/2007)

7/27/2007	282	THIS DOCUMENT HAS BEEN TERMINATED. Notice Concerning Retrieval of Court Exhibits (ghas) Text modified on 7/31/2007 (ghas). (Entered: 07/27/2007)
1/24/2008	284	Order Terminating Civil Contempt Order Signed on 1/24/2008 (copy faxed to Judge Crane's case manager on 1/25/08) (jezz,) (Entered: 01/25/2008)
1/27/2008	285	BNC Certificate of Mailing. (Related document(s):284 Generic Order) No. of Notices: 8. Service Date 01/27/2008. (Admin.) (Entered: 01/28/2008)
4/11/2008	286	Emergency Motion Filed by Texas State Bank Hearing scheduled for 4/14/2008 at 04:30 PM at McAllen, Bentsen Twr W Bush Hwy 83. (Attachments: # 1 Exhibit A Notice of Lis Pendens - Original# 2 Exhibit B Motion for Judicial Review Hidalgo# (3) Exhibit B2 Order Hidalgo County# 4 Exhibit C Notice Lis Pendens Supplemental# 5 Exhibit D Notice Lis Pendens# 6 Exhibit E Order - Cameron County# 7 Proposed Order Proposed Order on Motion to Modify) (Skaggs, Vicki) (Entered: 04/11/2008)
4/11/2008	287	Motion to Expedite Hearing. Filed by Texas State Bank Hearing scheduled for 4/14/2008 at 04:30 PM at McAllen, Bentsen Twr W Bush Hwy 83. (Attachments: # 1 Proposed Order On Motion to Expedite Hearing) (Skaggs, Vicki) (Entered: 04/11/2008)

4/11/2008	288	Amended Motion to Expedite Hearing. Filed by Texas State Bank (Attachments: # 1 Proposed Order On Motion to Expedite Hearing) (Skaggs, Vicki) (Entered: 04/11/2008)
4/11/2008	289	Order Resetting Hearing Signed on 4/11/2008 (Related document(s):286 Emergency Motion (Adversary), Emergency Motion (Adversary)) Hearing rescheduled for 4/15/2008 at 09:00 AM at McAllen, Bentsen Twr W Bush Hwy 83. (aain) (Entered: 04/11/2008)
4/13/2008	290	BNC Certificate of Mailing. (Related document(s):289 Order Setting Hearing) No. of Notices: 8. Service Date 04/13/2008. (Admin.) (Entered: 04/14/2008)
4/15/2008	291	Order Enforcing Judgment Signed on 4/15/2008 (rsmi) (Entered: 04/16/2008)

4/15/2008		Courtroom Minutes. Time Hearing Held: 9:00 am. Appearances: Vicki Skaggs, Lisa Powell and Daniel Gurwitz for Compass Bank; Johnny Partain pro se. (Related document(s):286 Emergency Motion). This hearing was conducted after the conclusion of the state court proceeding. Discussion was held regarding the lis pendens filed by Mr. Partain. The Court announced its findings and stated the filing of the lis pendens violated the Court's judgment. The Court ordered Mr. Partain to sign a release of lis pendens. A notary public was present while Mr. Partain signed the release. Copies of the documents were provided to all parties. The Court signed an order enforcing judgment. (rsmi) (Entered: 04/16/2008)
4/18/2008	292	BNC Certificate of Mailing. (Related document(s):291 Generic Order (Adversary)) No. of Notices: 8. Service Date 04/18/2008. (Admin.) (Entered: 04/19/2008)